THE READING UPON THE STATUTE OF THE Thirteenth of *Elizabeth*, CHAPTER VII. TOUCHING BANKRUPTS,

Learnedly and Amply Explained,

BY

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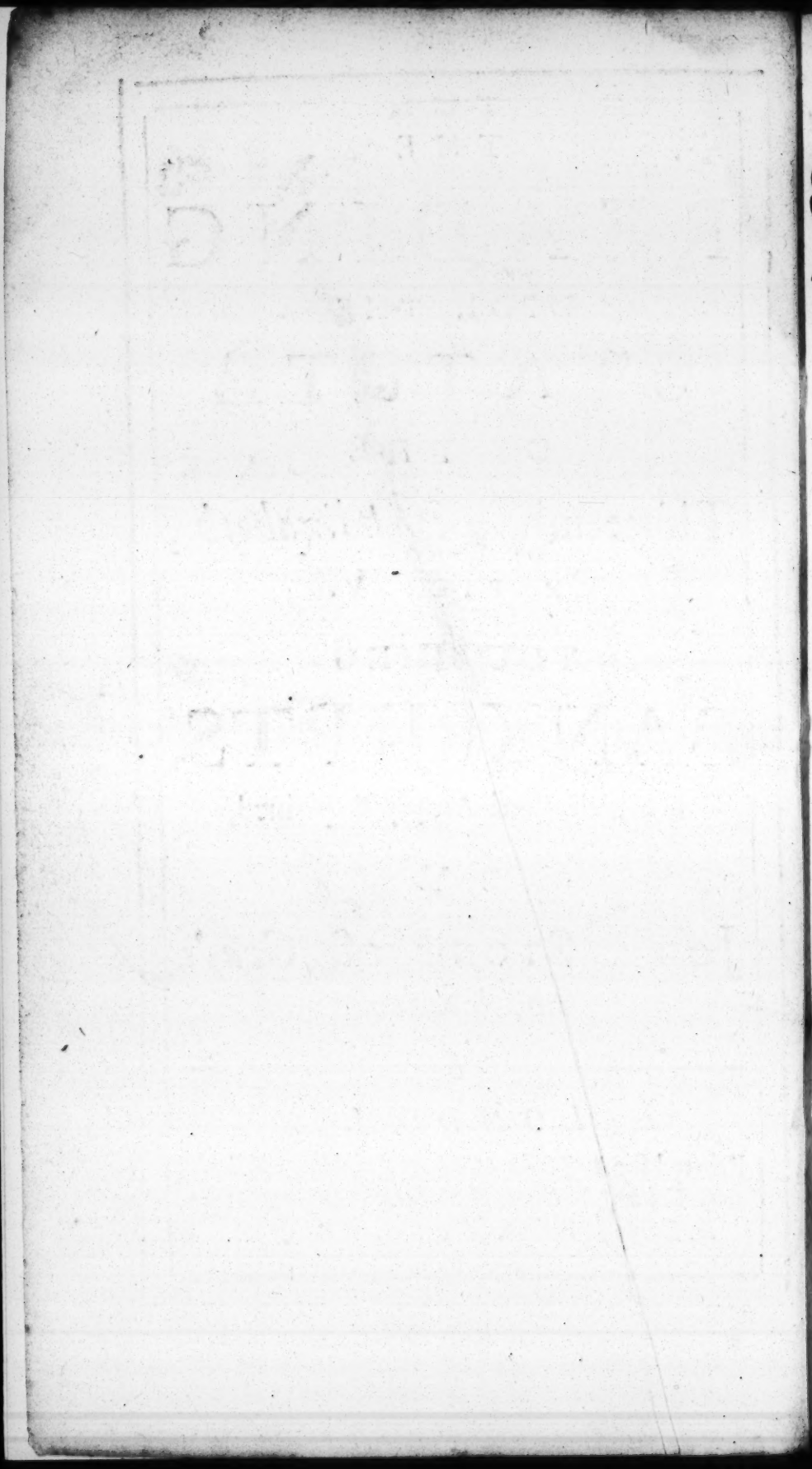

The Reading of *John Stone*, of *Grays-Inn*, Esq; upon the Statute of 13th. *Elizabeth*, *Cap.* 7. touching Bankrupts, learnedly and amply explained.

Oratio Lectoris.

HE was surely *liber & legalis homo*, that said, *Servi sumus omnes*: But he added, *Legibus servi sumus omnes, ut liberi simus*, For we are, and must be, all Servants to the Law, if we mean to live free and happy Lives; for the Law is the Rule of Right, by which all our Actions are to be squared; so as if you go not by the Law, you go not by Rule, or Order, but all our doings will be nothing else but *alia enormia*, things out of Rule: But as all Men are bound to keep the Law, so We above all Men that Profess the Law, that Study and learn by it the Art of Right and Wrong, are doubly bound not only to serve it, and observe it, but also to honour it, to advance it, and (to our Powers in all things) to maintain it.

Those that have gone before me in this place (amongst other things) have most commonly said something in the commendation of the Law; but for this time I mean to save that labour; and my reason is, for that two most worthy Men of this our Age (the one famous above all other for his Learning, the o-

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ther inferiour to few for his Wit) have both of them in their Epiſtles in their late Reports, written and ſet down as much of this Argument (I mean) of the commendations of the Laws, and of the Profeſſion and Profeſſors of the Law, as I can ſay, and more.

But to leave then the General, let me ſpeak ſomething of this Particular Law which you have heard read, upon which I have a little ſettled my Thoughts and Meditations.

Commerce (that is, Trade of Merchandize) it is a thing that hath always been ſo well known to be profitable to all Nations, if it be well handled, that our fore-Anceſtors, many Years ago, ſo favoured Merchants, that for their benefit, a Law was made of purpoſe, called, *Statutum de Mercatoribus*; ſo as, where at Common Law, if a Debt were owing to a Man, he could not by Law recover this Debt without Proceſs and Pleading, and yet then no Man's Lands were liable to the Judgments; by that Law (if once a Man acknowledged himſelf to be indebted to a Merchant, and pay'd not his Money at his day) without Proceſs, without Pleading, without further Suit or Judgment, the Merchant ſhall have preſent Execution againſt his Debtor, both for Body, Goods, and Lands.

It is true, that in thoſe days few *Engliſh-Men* were Merchants, but Strangers brought their Commodities hither, and fetch'd ours; but now that courſe is clean altered, for very few come from Foreign Nations to us; but we our ſelves Trade and Traffick into all parts of the habitable World, *Chriſtendom*, or Heatheniſh, and into many parts not Inhabited by any Human Creature.

But as the number of Merchants hath increaſed, ſo have their Cunning and Crafty dealings increaſed, ſo as now a days it falls out, that we had more need

to

to make Laws againſt them, than for them; for it is found to be (now a days) a matter of more difficulty for Men to get their Debts of Merchants, than it was in times paſt for Merchants to get their Debts of other Men, *Sed ex malis moribus, bonæ leges.*

Thereupon within this laſt Hundred Years, there have been many good Laws made againſt them, and eſpecially againſt them whom the *Civilians* call *Decoctores*, that is, Bank-Merchants, for in theſe three laſt Ages there have been publiſhed, amplified, and confirmed againſt them, three ſeveral Acts of Parliament, one in King *Hen.* 8. time, one other in the 13. *Eliz.* which you have heard read, and the laſt in *primo* of King *James.*

I have not ſo little diſcretion, as to take upon me to commend theſe Laws, for ſo I ſhould aſſume to my ſelf an Authority of the allowance, diſallowance, and cenſuring of Laws made by thoſe that know better what belongs to thoſe Matters than I do, and I ſhall idly ſpend the time in praiſing of them, that ſtand in no need of my commendation, only I will ſay (as *Thirning* ſaith in another Caſe in 14 *Hen.* 4.) Our Maſters that were before Us, and *plus ſcavant que nous*, have made and publiſhed theſe Laws; for my ſelf, that have undertaken to read or comment upon one of theſe Laws, I will diſcover thus much, that this Law was never yet Read on in this Houſe, nor in any other; the Uſe or Help of which I could not by any means obtain; but you may ſay to me hereafter, I need not tell you this; for as Sir *Tho. More* anſwered a bad Poet, that underneath his Verſes had written, *Raptim ſcripſi*; *ſtulte quid hic ſcribis?* Why doſt thou ſay of thy Book, *Raptim ſcripſi, nam liber hoc loquitur te reticente tuus*; ſo I ſhall make it appear to you plainly before I have done, that I had no help in theſe Matters,

for if any wiſe or grand learned Man had been of my Council, I ſhould never have gone ſo badly thro' my buſineſs.

But I have an eaſe of one thing, that much troubled a Gentleman of a Noble Family, who being to publiſh a Book, ſaid, nothing troubled and terrified him ſo much from publiſhing his Work, as his friendly Foes expectation; I have an eaſe of that, for you all know my weakneſs ſo well, that I am ſure you expect nothing from me more than ordinary Matter; I pray God I may go well through with that; and there is another thing that eaſeth my Mind as much (on the contrary part) which I learned of a worthy Gentleman, not many Years ago, that ſupply'd this Place before me; for ſaid he then, and ſo ſay I now, I will do my beſt endeavour to pleaſe you all, but as he ſaid further, ſo ſay I, that I have abſolutely ſet aſide this vain hope, or impoſſibility, called, Expectation to pleaſe all: But I hope this, and no more, that my Friends will make the beſt of the worſt.

And I muſt ask pardon of you all in one thing, which is this, all the moſt Excellent Poets and Eloquenteſt Rhetoricians, and many great Hiſtoriographers, in all their beſt Works, they bring in always one Man that goes from the beginning to the end of their Diſcourſes, whoſe Famous Vertues, and Noble Acts, grace their whole Work: But ſo much the Law differs from their Acts, that I muſt be enforced to the quite contrary; for in every Act, and in every Scene (that is) in every Diviſion, and in every Caſe I put, I muſt bring in a running Tromper and Impoſter (a Bank:) But I ſhall deſire you to reſpect, rather the goodneſs of the Law, than the lewdneſs of the Breaker, therefore, and that my endeavours may tend more for your Learning and mine, than for our Delights; Now my Law is this, 1. *Who*

1. *Who ſhall be ſaid a Merchant, or other Perſon, ſeeking his Trade of Living by Buying and Selling, within this Statute.*

An Adventurer in the *Eaſt-India* Voyage is within this Statute.

To *Newfound-Land* for Plantation, or Diſcovery, is not.

An Adventurer in the *Virginia* Voyage is not.

One of the *Muſcovia* Company, Adventurer to *Green-Land*, and Diſcovery, is not.

A Clothier, or any Manual Occupation, which is within the Statute of 5. *Eliz.* of *Labourers.*

A Graſier is no Mechanick.

A Gentleman goeth beyond Seas, and giveth his Bills of Exchange to be paid here by his Bayly or Steward, who accepts it, and after that proteſteth, no Merchant.

Goldſmith, Hammer-man, Goldſmith-Shopkeeper, the ſame of Jewellers.

A Feme-Covert ſole Merchant in *London*, the Husband is Out-lawed, the Commiſſioners ſell the Land of the Husband, who dies, the Wife brings Dower, *London* 11. *Aſh.* She is Siſter to the Elder Brother, and after another Brother is Born Heir to the Elder.

There is a difference between a Smith, and an Ironmonger.

A Feme-Covert ſole Merchant, an Obligation is made to the Husband and Wife, and they are Divorced, and ſhe is a Bankrupt.

An Inn-keeper is within.

A Courtier takes a Leaſe of the King, of the Preemption of Tinn, if he ſhall be within the Statute during his Term.

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One hath a Monopoly of the ſole making and ſelling of Glaſſes, or Cards, he is not within, but any who hath the ſole Importing or Exporting of any Commodity, is within.

A Merchant gives over his Trade, and ſeven Years after becomes *non ſolvent* for Money he owed while he was a Merchant, he ſhall be a Bankrupt. *Jo. Quarles.*

But if it were for new Debts, contrary, *Hickmough*'s Caſe.

But if he were indebted, and gives over his Trade, and his Debts are continued at Intereſt, and the Bonds from time to time renewed, he is no Bankrupt, by *John Stone.*

Where one ſhall Sue for his Debt before it is due.

If an Aſſign ſhall have a Re-extent.

If an Aſſign ſhall have a Writ of Errour. See *Davies* Reading.

2. *Who ſhall be ſaid a Subject Born within this Realm, or any of the King's Dominions, or a Denizen.*

One Naturallized by Act of Parliament.

The Son of an Embaſſador of *Venice*, born here, and after Sworn to his King.

One is made Denizen, ſo that he is only a Purchaſer for his Life.

One Born upon the Sea, upon the Coaſts of *Holland.*

One Born in the Port of *Diep.*

The Biſhop of *Sodor*, Born in the Iſle of *Man.*

A Denizen, upon condition, that he ſhall not depart the Realm, and he for Debt departeth.

One made Denizen of *Ireland*, by the Charter of *Ireland*, 11. H. 8. *Kelloway, fol.* 202. A difference between the Iſle of *Man*, and *Wight*, &c.

A Pewterer goes beyond Sea, and there uſeth his Trade, he ſhall loſe his Priviledge, and the benefit of an *Engliſh-man*, ſaith the Statute of 25. *Hen.* 8. *cap.* 9.

One hath a Priſoner in Execution for Debt, and becometh a Bankrupt, if he eſcape, if the Aſſigns may have an Action of Eſcape.

Quere, If the Bankrupt releaſe to the Priſoner, if ſuch a Debt may be Aſſigned, for his Body is a Pledge.

3. *What ſhall be ſaid a Departing from his Houſe, or out of the Realm.*

A Merchant keeps his Ship for fear of Arreſting, which Ship is by Pyrates or Tempeſt driven beyond Sea.

A Merchant departs the Realm to Merchandize; and having loſs by Tempeſt, he returneth not upon a Privy Seal; if the King or his Creditors ſhall have his Goods.

A Commoner keeping his Houſe.

A Merchant indebted, leaveth off to Merchandize, and after keepeth his Houſe.

One keepeth his Ship, or his Mill, or being Churchwarden, keeps himſelf in any part of the Church.

One that hath no Houſe, but an Upper-Chamber.

One that is a Keeper of a Caſtle of the Kings.

One that hath no Houſe, but Sojourns now in one place, and after in another.

Abſenteth himſelf.

A Capias de Excommunicato Capiendo is awarded againſt a Merchant, who abſents himſelf for fear of being thereby Arreſted; no abſence within the Statute generally.

An Attachment out of *Chancery* is awarded againſt a Bankrupt, for not payment of Money decreed, if he abſent himſelf, he is a Bankrupt.

Contrary, if it were for not making a Conveyance.

Taking of Sanctuary.

Parries Caſe before the Biſhop of *Ely, Feb.* 1. 1616.

A Recuſant Convict grants an Advowſon for 21 Years, and dies, the Church becomes void; The Queſtion is, if his Heir, or the Leſſee ſhall preſent upon the Statute of 3. *Jacobi.*

4. *Sufferance of himſelf to be Arreſted, or Impriſoned for ſix Months,* by 1 Jacobi.

Outlawed.

Outlawed without Proclamation.

An Outlary reverſed by Errour, and Averment; a difference.

One outlawed for Felony, committed after he is a Bankrupt; if the King by the Outlary, or the Creditors ſhall be preferred for the Goods.

One outlawed in *Ireland.*

5. *Yeilding himſelf to Priſon.*

Impriſoned by 1 *Jac.* for a Fine in the Star-Chamber by Exchequer Proceſs.

For a Fine before the High Commiſſioners.

For a Debt recovered in the Admirals Court.

His Goods being Attached or Sequeſtred.

A Merchant Farmer of a Rectory, the Parſon ſerveth not the Cure.

6. *What*

6. *What Authority the Commiſſioners have upon the Body of the Bankrupt.*

A Merchant confeſſeth himſelf to be the Villane of *I. S.* who taketh his Goods.

A Merchant enters into Religion after Bankrupting or before, his Executors, *&c.*

A Bankrupt is made a Clerk.

7. *What Lands, Tenements, and Hereditaments of a Bankrupt which is Free-hold, may be ſold, which he hath in his own right, or purchaſed joyntly with his Wife or Children, or ſhall be ſaid to deſcend or come to him before, or after he is become a Bankrupt.*

Sale of Lands in Tayl.

If ſuch a ſale may prejudice him in remainder, or it ſhall be conſtrued a Feoffment of Record, as a Fine is; One hath Land in right of his Wife, if it may be ſold to one to have during the Coverture.

A Merchant makes a Feoffment to one upon condition to pay Money, if the Commiſſioners may transfer this power to perform the condition to any.

A Merchant maketh a Feoffment upon condition that the Feoffee ſhall pay the Money, and it is not paid, if the Commiſſioners may give Authority to any to enter for the condition broken.

Land is deviſed to a Merchant, or a Remainder, or an uſe is limited to him, if he can waive after he is a Bankrupt.

Rentſeck whereof there is no Seiſure, ſhall be ſold.

A Barony, Earldom, or Baronetſhip, are Hereditaments, and yet ſhall not be ſold.

A

A Villane ſhall be ſold, but if the Bankrupt Infranchiſe him, *Quere*, If he ſhall be ſold again.

The Office of Warden of the *Fleet*, or Gaolor of Inheritance, and all other Offices of Inheritance ſhall be ſold; contrary of Offices of Truſt, which are but for Life.

A Monopoly granted to one and his Aſſigns, ſhall not be ſold.

Land Eſcheated ſhall be ſold; but *Quere*, if it Eſcheat after the Commiſſion, and Death of the Bankrupt.

One bargains and ſells a Seigniory to a Bankrupt, and after Commiſſion the Bankrupt dies, and the Deed is Inrolled after the Commiſſion.

The Bankrupt having Land holden in *Capite* dies, his Heir within Age and Office is found, if they can ſell.

The ſame, if his Heir be an Ideot, or a Lunatick:

A Bankrupt becomes Lunatick, an Office is found.

A Bankrupt is Tenant in Tail, the remainder in the King, if it can be ſold but for the Life of the Tenant in Tail.

Tenant in Tail grants all his Eſtate, and becomes a Bankrupt, the Land ſhall not be ſold:

Tenant in Tail of a Rent, is diſſeiſed thereof, and dies, his Iſſue is a Bankrupt, and brings a Formedon, yet the Rent ſhall be ſold.

Two joynt Tenants, the one is a Bankrupt and dies, if his part ſhall be ſold, not, becauſe the Survivor is not in by him.

Tenant in Tail, the remainder to an Alien, Tenant in Tail is a Bankrupt, and ſuffers a Recovery, the Land is ſold.

Tenant in Tail dies without Iſſue, an Office is found, if the Land ſhall be ſold for the King.

8. *What*

8. *What Copyholds they may ſell, and what agreement made with the Lord is good.*

The Lord ſells the Freehold of one ſole Copyholder to *A*: the Copyholder becomes a Bankrupt, if the Commiſſioners can ſell.

Copyholder in Tail with a remainder, where no Recoveries, or where Recoveries are remedied againſt the Lord who will not compound.

A Copyholder by Licenſe of the Lord, makes a Leaſe for One and Twenty Years, the Copyhold Eſcheats, *Quere*, if the Leaſe is good againſt the Lord.

A Feme by Cuſtom is to have a Widows Eſtate, the Bankrupt makes ſuch a Leaſe, if the Feme ſhall avoid it.

A Bankrupt Copyholder makes a Feoffment, the Lord enters, the Commiſſioners ſell, the Vendee tenders a competent Fine, the Lord refuſeth to admit him, the Vendee enters, the Lord brings Treſpaſs, it lieth not.

A Bankrupt makes waſte, the Commiſſioners ſell, the Lord enters for a Forfeiture.

A Copyholder ſurrenders into the hands of two Tenants, he to whoſe uſe is a Bankrupt, the Lord diſſolves the Mannor.

9. *What Fees, Annuities, Offices, Goods, Chattels, and Debts, the Commiſſioners may ſell.*

A Merchant acknowledgeth himſelf to be the Villane of *I. S.* the Commiſſioners may Aſſign his Debts, *Quere*, of his Goods.

A Leaſe for Years, provided that he ſhall not alien, the Commiſſioners ſell, if it be a Forfeiture.

10. *What*

10. *What Uſes, Intereſts, Rights, or Titles of a Bankrupt, the Commiſſioners may ſell.*

A Bankrupt hath an Advowſon, the Church becomes void, the Commiſſioners ſell, the Vendee preſents, if this be Symony.

A Bankrupt preſents one who is privy to his Bankrouting, who is Indicted, the Commiſſioners ſell, their Vendee brings a *Quare impedit* within ſix Months.

A Bankrupt hath a Warranty, what uſe the Vendee ſhall have of it.

A Bankrupt hath the next avoidans, the Commiſſioners preſent one for Money paid to the Creditors.

The Diſſeiſor dies ſeized after five Years, the Diſſeiſee becomes a Bankrupt.

A Woman hath a Rent charge, ſhe takes a Husband a Bankrupt who Diſtrains, and Reſcous is made, if the Commiſſioners can ſell all the Rent which ſhall be due during the Coverture, 1 *E.* 3. *fol.* 5. *Pl.* 23.

The Commiſſioners ſell a Rent, or Reverſion, if good without Attornment.

A Bankrupt loſes by erroneous Judgment, if this right to bring a Writ of Errour may be transferred by the Commiſſioners.

The ſame of an Entry for condition broken, or performance of a condition.

A Bankrupt becomes Lunatick, the Commiſſioners ſell, an Office is found.

11. *What Deed Inrolled in one of Her Majeſties Courts of Record ſhall be good.*

The Deed is not acknowledged before any of the Maſters of the *Chancery* by the Commiſſioners.

The Deed is not Inrolled within ſix Months, the Statute of Inrolements ſaith, by Bargain and Sale only.

I. S. By preſcription holdeth Plea in his Mannor above Forty Shillings, the Deed is there Inrolled, after Sale and before Inrolment the Bankrupt takes a Wife, and die, if ſhe ſhall be endowed, the Deed is inrolled in the Mayors Court in *London*; no queſtion, of the Huſtings.

12. *What ſhall be ſaid a juſt Debt, and how the Statute ſhall make an apportionment between the Creditors; what is their duty to do, and what remedy they have for their Portions, and who ſhall be ſaid a Creditor, and who ſhall be relieved.*

A Merchant indebted as Surety, or Bail for a Gentleman, but not for himſelf.

If one may Sue for a Legacy before the Commiſſioners.

How a Debt doubtful ſhall be tried before the Commiſſioners.

For Money decreed to him in the Chancery or Star-Chamber.

One Creditor ſole Sues a Commiſſion, and keeps it with him ſecretly until the laſt day, within four Months, and then the Commiſſioners ſell the Land, and pay all to this Creditor, the others never having notice thereof; what remedy for them?

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The Commiſſioners ſell all the Land, and diſtribute all, but this is not full ſatisfaction, after other Land deſcends to the Bankrupt, if they can make another ſale, and new diſtribution.

The four Months are paſt, and part of the Eſtate diſtributed, new Creditors come in, if they ſhall be admitted to have contribution of the reſt, which is not yet diſtributed, and if ſuch new Creditors ſhall have allowance ratably with the other Creditors according to the Remnant of their Debts, or according to all paid, or not paid.

A Bankrupt becomes indebted to one who had notice that he is a Bankrupt, if he ſhall be admitted a Creditor?

One hath a Debt which is not yet due, yet he ſhall be relieved with rateable reſpect of abatement for the time.

13. *What Act or Conveyance made by a Bankrupt before or after he is a Bankrupt, ſhall be good.*

He takes a Wife after he is a Bankrupt, if ſhe ſhall be indowed of Land, which he had before.

He takes a Wife after he is a Bankrupt, and Land deſcends to him, if ſhe ſhall be indowed.

A Bankrupt Diſſeiſor, the Commiſſioners ſell, and before the Deed is inrolled the Diſſeiſor releaſes to the Bankrupt.

A Bankrupt preſents one who is private to his intent, who is indicted, the Commiſſioners ſell, the Vendee brings a *Quare impedit*.

A Bankrupt becomes a Clerk-Convict, and hath Goods within a Liberty.

A Bankrupt after Commiſſion awarded becomes *felo de ſe*.

A

A Conveyance to the uſe of a Daughter a Widow formerly advanced.

A Merchant Tenant in Knight-ſervice, his Heir within Age makes a Feoffment by colluſion, the Lord after becomes a Bankrupt, this is no fraud againſt the Creditors, but yet the Land ſhall be ſold, for though it be fraud between the Lord and the Tenant, yet there is a Truſt between the Feoffor, and Feoffee.

14. *What Declaration or Account the Commiſſioners ſhall make to the Bankrupt, and whether the Proviſo be a Condition, and what remedy the Bankrupt hath for to cauſe them to account.*

The Commiſſioners all die after the ſale of the Lands, and diſtribution, what remedy hath the Bankrupt for the reſt againſt the Executors of the Commiſſioners, or againſt the Survivor of them.

After the Sale, and before diſtribution, all the Commiſſioners die but two, what ſhall be done.

A new Commiſſion ſhall be awarded to other Commiſſioners (not to them) and they ſhall be called before the new Commiſſioners, as they who have the Eſtate of the Bankrupt in their hands.

15. *What ſhall be ſaid a concealment of the Eſtate of a Bankrupt, or of his Perſon, or a fraudulent claim or demand, or detaining of his Eſtate, and what remedy for the Forfeiture or Fine.*

16. *What damage is it to be out of the Kings Protection, by this Statute.*

17. *Who*

17. *Who ſhall be ſaid a Creditor within this Statute.*

A ſole Creditor if he can ſue the Commiſſion.

A Mortgage of Lands or Goods, if they can ſell them.

Conuſee of a Statute-Merchant, or Recognizance.

The Plaintiff who hath the Body of the Defendant in Execution upon a Judgment at the Common Law.

He who hath the Bankrupt in Execution upon a Statute-Merchant.

A Merchant is taken in Execution, and after becomes indebted to *A.* and remains ſix Months in Execution, and ſo is a Bankrupt; if *A.* ſhall be a Creditor, that is, if he be a Bankrupt from the beginning of his Impriſonment by relation, or only after the ſix Months.

A Merchant is impriſoned for Debt, the Gaoler Credits him for Victuals for a Year, if he ſhall be a Creditor for part, for all, or for none?

A Bankrupt is Convicted for keeping of Inmates, or erecting Cottages, the Statute gives an Action of Debt to the Lord of the Leet, he is no Creditor

18. *What Conveyance the Commiſſioners may make after the Death of the Bankrupt.*

A Feme Covert, ſole Merchant within Age, the Baron and Feme levy a Fine of the Land of the Feme, a Commiſſion is awarded, the Fine is reverſed for Non-age of the Feme, with a Ceſſation of Execution during the Life of the Baron; they have Iſſue, the Feme dies, the Commiſſioners ſell, the Iſſue enters.

The

The First Division.

Who shall be said to be a Merchant, or other Person, using or exercising the Trade of Merchandizes, by way of Bargaining, Exchange, Bartry, Chevisance, or otherwise in gross, or by Retail, or seek his or their Trade of Living by Buying and Selling.

1. A Makes a Lease for Years to B. and grants the reversion to C. in Tail, B. attorns and enters, A. grants the reversion of C. to D. being a Denizen of *Ireland*, C. commits Treason, and attorns, D. becomes an Adventurer to the *East Indies*, C. is attainted, D. is *Non solvent*, and having no House, keeps himself on Ship-board, C. Dies without Issue, a Commission is awarded, and after *supers* the Commissioners sells the Land by Deed Inrolled in the Mayor's Court in *London*.

D. is a Bankrupt within the Statute, and the Sale by the Commissioners is good.

2. Tenant for Years of an Inn, makes a Feoffment in Fee to Baron and Feme, an Alien makes livery within the view to the Feme who enters, the Baron is made King, the Lessor being an Adventurer of *Virginia*, Releases to the King by Deed Inrolled, an Office is found, the Queen waives, the Lessor enters, and keeps the Inn, and being *Non-solvent*, is made Keeper of a Castle in the Isle of *Man*, where he was Born, and there remains.

The Leſſor is a Bankrupt within this Diviſion of the Statute, and the Commiſſioners may ſell the Land.

3. A Diſſeiſor makes a Leaſe for Life to a Feme ſole, the remainder to the right Heirs of *I. S.* ſhe makes a Feoffment in Fee upon condition, and enters for the condition broken, and grants a Rent charge to A. a *Goldſmith* of *London*, Naturalized by Parliament, the Diſſeiſee Releaſes to the Feme, ſhe Marries A. the Diſſeiſor enters, and makes a Feoffment to a Stranger, *I. S.* dies, the Feme hath Iſſue, and dies, A. enters, and being *Non-ſolvent* ſurrenders to the Iſſue and departeth the Realm to Merchandize, the Commiſſioners ſell the Rent, the right Heir of *I. S.* enters.

A. is a Bankrupt within this Diviſion of the Statute, and the Vendee may preſently Diſtrain for the Rent.

4. R. Tenant in tail makes a Gift in tail to M. hath Iſſue, and dies, M. makes a Feoffment to C. and dies without Iſſue, his Wife the Iſſue of R. enters, a Son is Born who enters, the Feoffee enters, and being a Graſier buyes lean Cattel, and feeds them upon the Land, and Sells them when they are fat, and ſells his own Houſe, and after being *Non-ſolvent* keeps his Neighbours Houſe.

C. is no Bankrupt within this Statute, and the Iſſue of R. recovers the Land by Formedon, and the Son Born hath no right.

5. A

5. A Man hath Iſſue, A. and B. two Daughters, they Diſſeiſe I. S. and infeoff their Father; A. Marries C. and by his leave becomes a *Sempſter* in the *Exchange*, *London*; the Father dies, I. S. releaſes to the Husband, B. brings a *Neuper Obiit* againſt A. and C. C. makes default, after default, A. is received, and being indebted to divers Creditors, diſclaims in the Blood, the Husband keeps the Houſe.

The Husband is a Bankrupt within this Statute, and the Moiety of the Land is liable to the ſale of the Commiſſioners during the Coverture.

6. One makes a Leaſe for Years to A. the remainder to B. for the Life of A. the remainder to the right Heirs of A. B. dies, A. having Iſſue a Daughter, his Wife with Child with a Son, deviſes the Land to I. S. for the Life of M. for payment of his Debts, and makes I. S. his Executor, and dies, I. S. enters, the Daughter being a Feme Covert, ſole Merchant in *London*, enters, M. dies, the Daughter is *Non ſolvent*, and elopes, the Son born enters.

The Daughter is a Bankrupt within this Statute, and the Commiſſioners may ſell the Land.

7. One deviſes his Land to A. B. and C. *& hæredibus*, A. paying 10 *li.* they enter, and A. being an Exchanger enters into Religion, B. releaſes to C. the Bills of A. are proteſted, C. dies, the Creditors of A. brings Action againſt his Executors, and before Judgment A. is deraigned, the Commiſſioners ſell all the Land.

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A. is a Bankrupt within this Statute, but t
ſale is good only for a third part.

8. M. and F. joyn Tenants of a Horſe, Mor
gage him to E. a Feme ſole, who intermarries wi
M. F. being a Horſecourſer, performs the condit
on, and takes the Horſe, E. by commandment
her Husband Steals the Horſe, M. and E. are Divo
ced, *cauſa præcontractus*, M. dies, E. is indicted fo
Felony, the Horſecourſer becomes a Bankrup
the Commiſſioners ſell the Horſe.

F. is a Bankrupt within the Statute, and t
ſale is good.

9. The King makes a Leaſe for Years, rendrin
Rent of the Pre-emption of *Tynn* in *Cornwall*, t
I. S. one of the Grooms of the *Privy Chamber*, wh
becomes indebted to divers Perſons for *Tynn*, bough
of them by his Deputies, and ſold to Merchants
the term expires, I. S. continues his Debt by renew
ing aſſurance, and payment of Intereſt for Seve
Years, and then keeps himſelf in the King's Hou
for avoiding the Arreſts of his Creditors, the Com
miſſioners ſell his Fee.

He is no Perſon who is a Bankrupt within th
Statute, and the ſale is void.

10. A. Feme ſole being ſeiſed of Land in Fee,
contracts with C. an *Ironmonger*, and D. a *Smi*
(for Money to him by them paid) to marry A
and that after the Marriage he and A. will Levy a
Fine of the Land of A. to the uſe of C. and D. and
their

their Heirs; the Marriage is had, the Fine is Levyed, C. is Outlawed, D. departeth.

C. is a Perſon who is a Bankrupt by this Statute, but not D. and the Moiety of the Land ſhall be ſold.

The Points of the Second Caſe.

1. WHen Tenant for Years makes Livery within the view, the Queſtion is, Whether the Feoffer, or the Feoffee, or both, or neither, are Diſſeiſors. See *Aſh. Diſſeiſin.*

It appears by our Books, as in 10. *E.* 4. *fol.* 18. that before the Statute of *W.* 2. *cap.* 25. Tenant for Years had made a Feoffment, he was the only Diſſeiſor, and by the Statute, *Tam feofator quam feofatus*, ſhall be Diſſeiſors; ſo as *vivente altero eorum locum habeat predictum breve* (meaning the Writ of *Aſſiſe*) and the very reaſon why that Statute was made, was to avoid the miſchief which was put in practice in *Farmer*'s Caſe, in *Coke lib.* 3. For even as there Tenant for Years, or a Copyholder would Levy a Fine, and yet keep Poſſeſſion, and then thought by ſuffering five Years to paſs without entry or claim by the Leſſor, that he might gain the Land; ſo here Tenant for Years would make a Feoffment, then he being the only Diſſeiſor, if he died, there would no Aſſize lie againſt the Feoffee; and ſo the Leſſor loſt the benefit of this *feſtinum remedium*, which the Statute gives: This very Queſtion being moved by chance in the Court of *Wards*, *Hesketh* was of Opinion, that if before the Statute, Tenant for term of Years had made a Feoffment

upon the Land, he was the only Diſſeiſor, if within the view the Feoffee was the only Diſſeiſor. But what ſuch a Livery within the view would work ſince the Statute, he made a great doubt; if I ſhould hold that neither of them both were Diſſeiſors, and that nothing paſs but only the Term, I ſhould very well maintain the concluſion of my Caſe to the end, for nothing doth actually paſs by Livery within the view, but by Operation of the Law, and the Law will never work to do any Man wrong, and therefore, 9 *H.* 7. Tenant for Years of one Acre, and in Fee of another, makes a Feoffment of both, and makes Livery only in the Acre wherein he hath Fee, nothing paſſes of the Acre he had for Years.

28. *H.* 8. *D.* 18. One hath a Houſe Leaſed, and one cloſe in poſſeſſion, *&c.* for Act in Law never will work a wrong.

41 *E.* 3. 5. The Tenant pleads *non tenure*, if the Land deſcend *pendente vere*, the Writ ſhall not abate.

So if nothing paſs but the Term, then if I reſolve the ſixt point of my Caſe, that the Term remains with the Queen after Marriage, then the Releaſe made to the King works nothing, and ſo the Leſſors beſt right is to enter for a Forfeiture, although the Queen afterwards waive; but I will let this Queſtion reſt a while by reaſon of, *&c.*

20 *Eliz. D.* Where by the Opinion of the Chief Juſtices, That when Tenant of 100 Years makes a Feoffment by Letter of Attorney, the Leſſor being upon the Land that the Fee paſſeth.

2. Whether Livery within the view be good without Deed?

3. Whether a Feoffment made to Baron and Feme without

without Deed and Livery to the Feme ſole, be good to the Husband until diſagreement?

4. Whether if Tenant for Years enfeoff two and the Leſſor Releaſes to one, if he ſhall exclude his Companion?

5. If Baron and Feme are Diſſeiſors, and the Diſſeiſee releaſe to the Baron, if he ſhall exclude his Wife?

6. A Feme Covert hath a term, and the Husband is made King, if the Queen or the King ſhould hold the term?

7. Baron and Feme Diſſeiſors, the Baron is made King, the Diſſeiſee releaſes to him, if it makes the King and the Queen Joynt-Tenants, or Tenants in Common, or if they ſhall be ſeiſed by moieties, or intireties, or if the releaſe be not utterly void, is the ſeventh Queſtion.

8. I. S. is Diſſeiſed to the uſe of the Prince, who is made King, the Diſſeiſee releaſes, if this be not void, for then the King agreeth to the Diſſeiſin.

9. A Feoffment is made to a Feme Covert Alien, the Baron is made King, Office is found, if the King ſhall have the Land?

10. A Feoffment is made to a Feme Covert, and the Husband is made King, if ſhe can waive?

Points upon the Statute.

1. WHether an Adventurer into *Virginia*, be within the Statute?

2. Whether an Inn-keeper be within the Statute?

3. Whether one born within the Iſle of *Man* be within the Statute?

 4. Whe-

4. Whether the keeping of one of the King's Caſtles, be a keeping of his Houſe within the Statute?

2. and 3. Queſtions are, Whether a Feoffment made without Deed to the Husband and Wife with Livery within the view to the Wife only, and ſhe enters, will inveſt any thing in the Husband?

That Livery within the view may be made with Deed, I make no great queſtion, It is true, that the Books are both ways.

For 38 *E.* 3. 32. 38. *Aſſ.* 2. Baron and Feme, *Allford*, 41 *E.* 3. *Jo. Sees* Caſe.

Temp. Hen. 8 *Brook*, It is good ſaith he by Deed by Livery within the view.

Thorowgood's Caſe, *Coke, lib.* 9. If of the ground, he ſaith, ſee you this Land enter according to the Deed.

Cont. 39 *E.* 3 *Aſſ.* 12. I vouchſafe you the Land, 42 *E.* 3. *Fitz.* Feoffment. 54. the ſame Caſe, *Wich:* made he a Deed to his Father, *Laſſ. non. Wich:* was the Land in *vica*, *Aſſ.* it was half a Mile from the Church yard. 11. *Aſſ.* 6. 11 *E.* 3. *Aſſ.* 86. Feoffment of all but one Chamber. 43. *Aſſ.* 20. *per* Brook, Feoffment without Deed.

But the Queſtion is, whether a Feoffment to two or three by Deed with Livery to one is good to all, but without Deed, but to him to whom, *&c.*

10 *E.* 4. 1. 8 *E.* 4. 12. 15 *E.* 4. 18.

But here the Baron and Feme cannot take by moieties, and their Eſtate is but one Eſtate, and they are Diſſeiſors, both at Common Law, and alſo by Statute, ſo as if the Baron conſent afterwards, he conſents as one that conſents to a Diſſeiſin made to his uſe.

15. *Aſſ.* 11. by agreement to a Reſcous made by a Stranger, the Tenant is a Diſſeiſor.

37. *Aſſ.*

37. *Aſſ.* If my Tenant at will, enter into another Man's Land, lying by my Land, or take Eſtovers or common, if I conſent to it, I am a Diſſeiſor.

Tenant for Years enfeoffes, two and the Leſſor releaſes to one of them, if he ſhall hold his Companion out.

27 *E.* 3. *cap.* 9. *gives* an *Aſſ.* of *novel diſſm.* to Tenant by Statute Staple againſt him that outs him, as againſt a Diſſeiſor; yet he hath no Free-hold, for 1 *E.* 3. a *quid juris clamat* lies againſt him, although he be but Diſſeiſor *fictitius*, yet at the election of the Diſſeiſee, he is a Diſſeiſor in Law, as 7 *E.* 4. the Vouchee is but *tenens fictitius*, yet a releaſe is good to him.

If Tenant for Years infeoff two and the Leſſor brings aſſiſe againſt one, he ſhall not plead that his Companion is alſo Tenant not named; for by the Statute of 3 *E.* 1. *de Conjunctim feofatis*, he muſt ſhew of whoſe Feoffment, which if he do, he overthrows his own Eſtate, and muſt plead himſelf was a Diſſeiſor, which the Law will never allow; for 1 *E.* 4. *fol.* 7. no man ſhall be ſuffered to ſay, that he himſelf was a Diſſeiſor. *Coke*, *Beverlies* Caſe 4. *Rep.*

To ſtultifie himſelf, *Herl.* 5 *E.* 3. *non ſanæ memoriæ* inbleniſht himſelf, 35. *Aſſ.* 10.

It is true, that in reſpect of themſelves, they are in by Feoffment and Title, in reſpect of the Leſſor they are Diſſeiſors; then the queſtion is, who ſhall be in election, and who ſhall interpret how this releaſe ſhall work, the Leſſor, or the Leſſee, or the third Perſon.

It is probable to ſay the Leſſor, for *cujus eſt dare &c.* and *H.* 7. If one Man be to pay two Sums at one time and place, and pay but one, it is in

in election, and interpretation of the Payer and not the Receiver, which ſum was meant to be payed.

It may be ſaid the releaſe, *&c.* for the Party to whom a Deed is made, if it inure to two intents, ſhall, *&c.* as 7 *H.* 6. a Feoffment may be uſed as a confirmation, 15 *Eliz. D.* releaſe, and grant of a Rent.

But I conclude, the third Perſon ſhall take benefit, *&c.* Firſt, for the reaſon that *int. ſe*, &c. But they are Diſſeiſors, not at Common Law, but by Statute, for the Benefit of the Leſſor, of which Statute he may take benefit if he pleaſe, or waive it: 3 *E.* 4. 21 *H.* 7. 32. 19 *Eliz. D.* Alien and Denizen challenge *medietatem linguæ*, ſo here he hath his election to make him a Diſſeiſor by bringing his *Aſſ.* or a Tenant in by Title by the releaſe.

Baron and Feme Diſſeiſors, and a releaſe to a Baron whether ſhall this inure to the Feme, for they are ſeiſed not by parts, but by intireties, it ſhall go all to the Husband, for *flagitioſæ rei nulla eſt ſocietas*, it is *feodum. princip. & commiatem latronum.* The queſtion hath been, if a Feme ſole be a Diſſeiſor, and marry, whether the Husband be a Diſſeiſor or not, 6 *E.* 3. 42. he is not, for in a Writ of Entry, *ſur diſſeiſin* againſt him and his Wife, he had the view; but in our caſe (I take it) that if no other thing had happened between the Diſſeiſin and the Releaſe, the Husband ſhould have had all.

The Husband is made King, the queſtion is, Baron and Feme are Diſſeiſors, the Baron is made King, the Diſſeiſee releaſes to the King what is wrought. Firſt, when Baron and Feme are Joyntenants by Diſſeiſin, by Title, or by Diſſeiſin, all is one, and the Husband made King; whether do they remain Joyntenants, or elſe they are Tenants in Common? Or elſe hath the King ail? Or the Queen

Queen all? I hold them to be Tenants in Common, although this caſe can be matched or compared with no caſe of the Law, wherein the alteration of the Perſons only ſhall change the Eſtate of the Parties without making of any new conveyance of the Land. 32 *H.* 8. *Brook Deraign.*

22 *H.* 6. 2. A Feoffment to an Abbot, and I. S. they are Tenants in Common, but a Feoffment to A. and B. and A. is made an Abbot, all ſhall ſurvive to B.

So if a Feoffment to A. and B. and A. acknowledgeth himſelf Villain to I. S. this alters nothing till I. S. enter; but whatſoever the King hath before he is King, or whatſoever deſcends to him, or he purchaſes after he is King, he holdeth all, *in jure coronæ ſuæ Angliæ. Caluins* Caſe, *ex parte matris*, *Barkley*'s Caſe, *Gavelkind.*

Lancaſter. Partition int. ſorores Queen *Eliz.* Queen *Mary*, Queen *Katharine*, *Ferdinando's* Daughters.

So as the King's poſſeſſion alters the very nature of the Land, and ſo makes him and his Wife Tenants in Common.

And that it makes her as it were a Feme ſole, I need vouch no authorities, who all know it in Experience.

18 *E.* 3. *fol.* The Queen alone brought a *Quare impedit.*

49 *E.* 3. 4. *Cavendiſh*, the King may give Lands or Goods to the Queen.

9 *H.* 6. 13. *Margery Parkers* Caſe.

14 *H.* 4. 67. *Sci. Fac.* by the Duke of *Suffolk*, againſt the Queen, to repeal the Patent whereby the King had granted to the Queen the Land of the Duke's Father, *Tirwhite*: In all times a Precipe hath been brought againſt the Queen, for ſhe hath always

always been a Perſon exempt, notwithſtanding the Coverture, ſo both their Perſons being changed, *&c.* it is as if the King were Dead.

Then have I driven it to this paſs, that the releaſe can work but to a Moiety, the queſtion being whether it work for all or for a Moiety, or none, that it ſhould work for none.

If a Feoffment be made to the Wife, and before agreement or diſagreement, the Baron is made King; I ſay he comes too late now to agree or diſagree, no otherwiſe then if he had died.

Then the queſtion is this, One makes a Diſſeiſin to the uſe of I. S. and he is made King, can he now agree to the Diſſeiſin? The rule is, The King cannot be a Diſſeiſor; it is true, that in times paſt he might.

20 *H.* 3. *Aſſ* 431. *Non habet ingreſſum niſi per Diſſeiſinam quam Dominus Rex facit quærenti dum fuit infra ætatem, & in Cuſtodia Comitis de* S. and the Tenant ſaith, *Non habet ingreſſum per Diſſeiſinam quam Rex fecit, ſed habet ingreſſum per judicium curiæ,* &c.

But at this day the Law is altered:

22 *E.* 3. 37. 23 *E.* 3. Entry 11. If the King Diſſeiſe one, and makes a Feoffment, the Diſſeiſee ſhall have a Writ of Entry, neither in the *per* nor in the *poſt*, *quam Dominus Rex fecit.* See the Book.

1. *H.* 4. *cap* 8. It was doubted what remedy one ſhould have, but the Statute is, That if the King enter, and grant the Land of another, if the Grantee enter, the Tenant ſhall have an Aſſiſe, and trebble Damages againſt the Grantee.

And by the ſame reaſon he may not agree to a Diſſeiſin done before, for till agreement, the Diſſeiſor was Tenant, and nothing in the King, as 2 *H.* 7. 16. 15 *E.* 4. 15.

If

If you will ſay nothing but a Term paſſed, then in whom was it till I. S. was made King, in right of the Woman, and that it ſhall remain no otherwiſe than a Man that hath a Term in the right of his Wife, and is made King, ſhe ſhall have all her Inheritance, and all her Terms, no otherwiſe than if he were Dead.

3 *H.* 7. 14. The Queen and her Siſters were vouched as Heirs to *E.* the 4.

A Baron and Feme Alien, a Feoffment is made to the Feme, the Baron is made King, if upon Office found, the King ſhall have the Land?

He ſhall not have it.

For the Baron being made King, ſhe is made a Denizen by relation to the Marriage, which was to prevent the relation of the Office, no otherwiſe than *H.* 7. being made K. it had ſuch relation, that it drowned all former Offences, Forfeitures, and Attainders whatſoever.

7 *E.* 4. 31. The King grants a Farm to the Baily and Commonalty of S. they are made Farmers, and a Corporation. 2 *H.* 7.

A Lord infeoffes his Villain, he hath the Land and his Freedom.

Grondon's Caſe Commentaries, the King grants Land to a Corporation, this is a Grant, and a Licence in Mortmain.

Coke lib. 5. 15. Tenant for Life grants a Rent charge to him in the reverſion, and his Heirs, who grants it to one, and his Heirs, this is a grant and a confirmation.

A Diſſeiſor makes a Leaſe for Life, the remainder to the Diſſeiſee, the Diſſeiſee grants this remainder over, this is a grant, and a confirmation.

A

A Parſon makes a Leaſe to the Patron, who grants it over, this is an Aſſignment, and a Confirmation.

A Feoffment is made to Baron and Feme, the Baron is made King, if the Feme can waive.

1. Whether ſhe can waive or not, as a Feme may after death of her Husband?

2. In whom it ſhall veſt?

3. How the releaſe ſhould work then?

4. Whether a Feme Convert Diſſeiſor can waive?

She may no otherwiſe than if the Baron were Dead, for ſhe ſhall have all her own Land, and all her own Leaſes, but not her Goods.

And it is not of neceſſity that ſhe expect his Death, for if a Feoffment be made to Baron and Feme, and they are Divorced, the Feme may waive.

In whom it ſhall veſt, Whether in the King or not, becauſe in a ſort here was a partition?

But the queſtion will be upon the releaſe, whether that ſhall relate to extinguiſh all the right of the Diſſeiſee in all the Land, as if the Caſe were, Diſſeiſor makes a Feoffment to Baron and Feme, and I. S. the Baron, and I. S. make partition, the Diſſeiſee releaſes to I. S. this inures only upon his poſſeſſion for the half; the Baron dies, and the Feme waives I. S. hath all by Survivour, yet ſhall not the releaſe go to all?

Alſo by the waiver it cannot go to the King, for that were to make him a Diſſeiſor by the waiver, it cannot return to the Leſſee, contrary to his Livery, nor to the Leſſor, then will not this amount to an occupancy.

But in this Caſe the Queen cannot waive, but ſtill

ſtill in regard of the Leſſor ſhe remains a Diſſeiſor; for if a Feme Covert be a Diſſeiſor, and her Husband die, ſhe ſhall not waive the poſſeſſion, for ſo for years and days ſhe might take the profits, and yet in the end pay nothing, which were unjuſt. 41 *E.* 3. An Infant may be a Diſſeiſor, and cannot waive a deſcent.

It may be probably alledged, that ſhe might waive, for being a Feme Covert, ſhe may alledge ignorance of the matter of fact, that is, whether her Feoffer had but an Eſtate for years, or was ſeiſed in Feeſimple, and we find in our Books, that great wrongs have been excuſed by the ignorance of a Man in what wrong he did, and waiving the thing wrongfully taken. As,

22. *Aſſ.* 85. *vid. lib. faux impriſon. Heire ſon frere priſe, per Scots.*

7 *H.* 6. 27. One brought an Action of Treſpaſs for taking his Swans; the Defendant pleaded that he was Lord of ſuch a Mannor, and that in a River within his Mannor, he found the Swans, and took them for ſtrays; but after he had notice whoſe they were, he waived the poſſeſſion of them, and let them go; this was a good excuſe both of the Treſpaſs and Damage.

21 *H.* 6. 14. One brings Treſpaſs, *Quare filium ſuum rapuit*, &c. He anſwered, you married my Siſter, and had by her this Son, and you being out of the Country, it was reported you were Dead; whereupon I, as next kin to your Son, ſeized him, but when I heard you were alive, I ſent him home again to his Nurſe. Thus rightly did he waive, and avoid his wrong for want of true intelligence, which in Law we call Notice.

But in all thoſe Caſes, theſe wrongs were with in-

intents to do right, and the parties were of opinion they were in the right; but our case is of a Disseisor, which is always intended a wrong-doer.

But you will say, this Woman is no Disseisor at Common Law, her entry was not *malum per se*, but *malum prohibitum*, a Statute Disseisor, and she being a Feme Covert, is not bound by Statute.

But I say she is bound by the Statute, for in all Statutes where a Feme Covert is not expresly excepted, she is bound, as the Statute of 13 *H.* 6. Disseisin 1. *per Martin.* Baron and Feme may both be Disseisors.

35. *Ass.* 5. Baron and Feme Disseisors, Assise against the Baron sole abated.

15 *E.* 4. 15. Disseisin is made to anothers use, the Disseisor is Tenant untill agreement.

21 *E.* 4. 53. Tenant is issuing out of Land of the Wife, the Husband and Wife make a Rescous, they are both Disseisors.

That as I have argued the Lessor enters his entry is congeable for a Moiety, that is, the Queen's part.

Tenant in tail makes a Feoffment to a Feme Covert without Licence, the Husband dies, the Feme waives.

Points upon the Statute.

AN Adventurer into *Virginia*, is not within the Statute, for although from time to time we lend Trifles thither to exchange with the Savages; yet the main drift and cause of our Traffick thither is for Plantation and Discovery, and not for Merchandizing. I hold the same of *Greenland*, but not of *Muscovia*.

2. He

2. He that is an Inn-keeper is within the Statute, for he buys and ſells again retail. *Ireland*'s Caſe in *Smithfield.*

3. He was born in the Iſle of *Man*, the Statute is born within her Majeſties Dominions, or Denizen, and I ſhould have made ſmall queſtion, but that one born within the Iſle of *Man*, is born in her Majeſties Dominions, if it were not for the Book of 11. *H.* 8. *Kell. fol.* 202. It was found by an Office, that the Earl of *Derby* dyed ſeiſed of the Iſle of *Man*, the Counteſs came and prayed to be endowed, to whom *Brudnell ex aſſenſu Brook & Fitz. Herbert*, and all the Kings Counſel ſaid, That the Office was void, becauſe the Iſle of *Man* is not parcel of the Realm, but the Iſle of *Wight* is parcel of *Hamp-ſhire*, and *Wales* and *Ireland* are parcel of the Realm, for Writs of Errour lie, *&c.*

Hollinſhead deſcription of *Britain*, *fol.* 16. *b.*

And I think it is very true, that the Iſle of *Man* was then no parcel of the Realm; for the firſt mention thereof in any Chronicles, is the ſame year that *England* was Conquered by the *Normans*; for when *Harold* had at *Stainford-Bridge* Conquered another *Harold* that was King of *Norway*, one *Gordard* the King's Son of *Ireland*, fled to the Iſle of *Man*, in time Conquered it, and made himſelf Lord and Landlord of all the Iſle. So as to this day there is not a Free-holder in that Iſland, but all are Tenants to the King of that Country: It is about thirty miles long and fifteen miles broad, it is not governed by any written Laws or Courts of Record, but all their Controverſies are ended by Arbitrators, whom they call Deemſters.

When King *John* Conquered *Ireland*, he ſent Forces into *Man*, and waſted it all, but ſeated no Government there.

1240. One *Harold* of the *Norway* Line was received, and was inveſted in the Kingdom of *Man*, by the King of *Norway*, and yet afterwards he was made Knight by the King of *England*.

1250. Or thereabouts, in King *Ed.* 1. time, *Alexander* King of *Scots* having Conquered all the Iſlands, either by Strength, or for Money, amongſt the reſt brought the Iſle of *Man* under his Dominion; the old King's Daughter ſued to *Edw.* 1. as to the Supream Head of *Scotland*, the Anſwer, *Sequatur coram Juſticiariis de Banco Regis & ut Juſticia.*

Edw. 2. granted it to *Piers Gaveſton*, but in *Anno* 1393. *William* of *Mountacute* by ſtrength won it from the *Scots*, as *Thomas* of *Walſingham* ſaith, and ſold it to *William Scroop*, he was attainted, and ſo it came to *Hen.* 4. The King of *England* he granted it to *Henry Peircy* to hold it, by carrying before the King *Lancaſter's Sword*; but preſently he was attainted, and the King granted it to Sir *John Stanley*, and ſo it came to the Earl of *Derby*.

Seman's Caſe, 5. Reports.

A Man's Houſe is his Caſtle, and his Caſtle is his Houſe.

Points upon the firſt Caſe.

1. IF Tenant for years may attorn before Entry. 21 *H.* 7. One makes a Leaſe for years, and before the Leſſee enter, the Leſſor releaſes to him, the releaſe is void.

One bargains and ſells his Land to another, and before the Deed is inrolled, he attorns to the grant of the reverſion, and after the Deed is inrolled, and the Bargainee enters. 21 *H.* 7. 28 *H.* 8. *Dyer*, Debt for Rent lies before entry of the Leſſee. *Litt.*

Litt. Lord and Tenant, the Tenant makes a Leaſe for life, the Lord grants the Seigniory to the Tenant for life in Fee, the Tenant ought to attorn, yet he ſhall not hold of the Tenant for life, during his life.

28 *H.* 8. *Brook.* Tenant for twenty years, makes a Leaſe for ten years, Tenant for ten years attorns, it is good.

20 *H.* 6, 7. A Seigniory is granted by Deed to one for life, the remainder in Fee Tenant for life dies before attornment, *&c.* contrary if it were by Fine.

11 *H.* 4. 18. One who hath nothing in the Land muſt attorn, as Tenant in Dower who hath aſſigned her Eſtate:

2. The reverſion of Tenant in tail is granted, he commits Treaſon, and attorns, and is attainted.

12 *E.* 4. 3. Tenant in tail ſhall not be compelled to attorn, but 15 *E.* 4. 13. if he attorn voluntarily, it is good.

Nor Tenant in tail, after poſſibility, *&c.* 46. *E.* 3. 13. 39 *E.* 3. 20. 3 *H.* 6. 12. 5 *H.* 5. Attornment. 17. One makes a gift in tail rendring Rent, the Donor by Fine grants the Rent, the Tenant in tail muſt attorn. 8 *H.* 5. 10. Tenant for life grants his Eſtate upon condition, the Leſſor grants the reverſion, Tenant for life attorns, and after performs the condition, yet the Attornment is void.

But all the queſtion is upon the relation of the Office, and this ſhall not vacate the Attornment, for it ſhall not relate for the mean profits of the Land. Sir *William Fleetwood*'s Caſe, *Cook, lib.* 8. by the ſame reaſon, if Rent were reſerved, it were well paid, and well received, and ſufficient to inveſt the reverſion in the Grantee.

3. Adventurer to the *Eaſt-Indies* is within the Statute.

4. Gardian of a Ship is within the Statute.

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The Chancellor hath authority to award a Commiſſion, but not to grant *Supers*: And therefore death of the King, or a new Commiſſion leaving out the old Commiſſion may be, but no *Supers*.

If the King preſent to a *Benefice* above 20 *l.* the Chancellor cannot make a revocation, but as well in our Caſe, as in that Caſe by Warrant under the Signet, Privy Seal, or Seal Manual, the Chancellor may award *Supers*.

6. Denizen of *Ireland*.

Points upon the Third Caſe.

1. TEnant for life, the remainder to the right Heir of I. S. makes a Feoffment in Fee upon condition, and enters for the condition broken, who ſhall enter for the forfeiture.

The Feoffer ſhall not enter, for all is out of him by the Feoffment, and he hath nothing but a poſſibility.

The right Heir of I. S. ſhall not enter, for his remainder is deſtroyed.

The firſt Queſtion is upon the Statute of *W.* 2 *cap.* 25. Whether if Leſſee for years make a Feoffment by Livery within the view, the Feoffer or Feoffee, or both of them, or neither, be Diſſeiſors.

2. Upon Baron and Feme, whether a Feoffment without Deed to the Baron and Feme, and Livery only to the Feme, inveſts any thing in the Husband.

3. Upon the matter, admit they are both Diſſeiſors, whether the releaſe made to the Husband ſhall exclude the Wife? it ſhall, but in this Caſe, where Tenant for years enfeoffes two, and the Leſſor releaſes

releaſes to one, he ſhall not hold out his Companion.

4. Baron and Feme are Joynt-Tenants of a term, and the Baron is made King; what is become of the term, and ſo of Freehold.

Whether the King ſhall have all, or the Queen all, or they remain Joynt-Tenants, or Tenants in Common, they are Tenants in Common.

5. A Feme commits a Diſſeiſin to the uſe of her and her Husband, and the Husband is made King, and the Diſſeiſee releaſes to the King, what is wrought, if he can agree to the Diſſeiſin being King.

6. A Feme Covert Alien purchaſeth, the Husband is made King, and Office is found.

7. A Feme Covert purchaſeth, the Husband is made King, if he can waive.

Points upon the Statute.

1. IF one born in the Iſle of *Man* is within the Statute?
2. If Adventuring to *Virginia* is Merchandizing?
3. If an Inn-keeper be within the Statute?
4. If going to the Iſle of *Man* be a Departing?
5. If keeping of a Caſtle be a keeping of his Houſe?

The Second Diviſion.

Who ſhall be ſaid a Subject born of this Realm, or of any of the late Queens Dominions, or Denizen.

1. A. and B. Diſſeiſe C. (who in conſideration that A. at his requeſt hath married B. (being a poor Maid) releaſes to A. and his Heirs, to

the uſe of B. and his Heirs, Females of his Body; they have Iſſue, a Son and a Daughter, B. dies, the Daughter makes a Leaſe to C. for one and twenty years, rendring the ancient Rent, and dies, having Iſſue E. a ſole Merchant, born upon the Coaſt of *Flanders*, and is married to F. a Citizen of *London*, born in the Port of *Deep*, A. makes a Feoffment to F. who is outlawed for Debt.

The Feme is a Bankrupt within this Diviſion, and the Land ſhall be ſold, but ſubject to the Leaſe made to C.

2. One hath a Houſe of Gavelkind, and purchaſes Eſtovers to this Houſe, out of Land in Borough *Engliſh*, and dies having two Elder Brothers, they make partition of the Houſe, the Younger is Executed for Felony, the Lord enters into a Moiety, the Elder Brother born in *Virginia*, and uſing to give Gold for Silver, contrary to the Statute, and for that is condemned in 100 *l.* in an Action upon the Statute, at the ſute of the Informer, and the King, and remains in Execution at the King's ſute for ſix Months, the Informer, and I. S. a Creditor, ſue forth a Commiſſion.

The Elder Brother is a Bankrupt within this Diviſion, but no part of the Land ſhall be ſold by this Commiſſion.

3. The Leſſor when the King was abſent in *Scotland*, enters upon the Leſſee for life, and dies ſeiſed, his Heir for Money paid by a Merchant Naturalized, makes a Feoffment to him and to a Feme ſole an Alien, the Merchant and the Feme intermarry,

marry, the Leſſee and the Stranger make Livery by Letter of Attorney, the Baron is made Church-warden, and being *non-ſolvent* keeps the Church, Office is found.

The Baron is a Bankrupt within this Diviſion, and all the Land ſhall be ſold.

4. White-Acre is given to A. and B. Baron and Feme, and to the Heirs of the Baron for the Joynture of the Feme, a Diſſeiſor enters, and levies a Fine to C. who marries D. an Alien, A. dies, five years paſs, D. is ſole Merchant, and made Denizen upon condition, that ſhe ſhall not depart the Realm without her Husband's leave, B. brings Dower of Black-Acre, the Heir of A. enters into White-Acre, D. being *non-ſolvent* Elopes into *Scotland*, C. enters.

The Feme is a Bankrupt within the Statute, and White-Acre ſhall be ſold.

5. A Tenant for life, and B. an Infant, in reverſion, born in *Greenland*, they levie a fine to C. B. uſes his ſtock in the *Muſcovia* Company, and reverſes the fine, A. ſurrenders to the King by Deed, B. being of full age, and indebted to the Company, procures himſelf to be arreſted, and after he grants the reverſion to the King by Deed inrolled, and after the firſt Deed is inrolled, the Company ſues a Commiſſion.

B. is a Bankrupt within the Statute, and the Commiſſion is well awarded, and the Land ſhall be ſold.

6. A. and B. a Merchant-Stranger, enter upon C. the Heir of a Diſſeiſor, B. is made Denizen for ſeven years, the Diſſeiſee releaſes to A. who makes a Leaſe for years, rendring Rent upon condition to re-enter for non-payment, the Heir releaſes to B. the Land is extended for the Debt of A. B. is *non ſolvent*, the extender enters for non-payment, B. keeps his Houſe, ſeven years paſs, Office is found, A. dies.

B. is a Bankrupt within this Diviſion, and the Land ſhall be ſold ſubject to the Leaſe, but not to the Extent.

7. A Lord hath the Goods of Outlaws within his Mannor, and M. his Tenant who was born in *Gernſey*, is a Meal-man, and outlawed, and for redemption of his Goods, enters into an Obligation to the Lord to pay 100 *li.* B. recovers 10 *li.* againſt him for Battery, the Lord leaſes to him a Wind-mill, M. reverſes the Outlawry, and being in Debt to a *Scotch-man*, an *Iriſh man*, and a *Dutch man* for Corn, before his day of payment ceaſes to be a Meal-man, and becomes a Miller, and being *non-ſolvent*, keeps himſelf in the Mill.

He is a Bankrupt within the Statute, but the Debts are not remedied by this Statute.

8. An Accountant to the King hath a Seigniory, and dies, his Son being a Merchant, and born upon the River of *Canada*, releaſes to the Tenant all the ſervices for the life of the Tenant, who dies without Heir, a Stranger abates, the Son being *non ſolvent* goes to *Barmudas*, a Commiſſion is awarded for the King upon the Statute of 39 *Eliz. cap.* 7. and another

ther Commiſſion is upon the Statute of Bankrupts, the Commiſſioners for the King ſell the Tenancy to A. the Commiſſioners of Bankrupts ſell the Seigniory to B.

The Son is a Bankrupt within this Statute, and B. ſhall recover the Land againſt the abator by Writ of Eſcheat.

9. A. makes a Leaſe of years to B. a Merchant-Stranger, Denizen of *Ireland*, upon condition to have for life if he pay 10 *li.* at M. and to have in fee if he repair a High-way before *Chriſtmas*, rendring Rent upon condition to re-enter for non-payment, the firſt condition is performed, B. being *non-ſolvent* returns to *Ireland*, and there ſtays in his Houſe, the Rent is due at the Feaſt of *All Saints*, and is demanded and Arrear, B. performs the ſecond condition.

B. is a Denizen within the intent of this Statute, but the King ſhall have the Land during his life.

Upon the Second Diviſion.

The Points of the Firſt Caſe.

1. IF one may releaſe to one, to the uſe of another?

2. Two Diſſeiſors are, and they intermarry, and the Diſſeiſee releaſes to the Husband, to the uſe of the Wife in tail, where the Fee-ſimple is?

3. If Marriage of a poor Maid be a good conſideration to raiſe an uſe to the Maid, or to A.

4. Lands are given to a Feme Covert, and to her Heirs Females in tail, ſhe takes Husband, hath Iſſue a Son and a Daughter, if the Husband ſhall be Tenant by the Courteſie?

5. If

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5. If the Iſſue in tail in the life of Tenant by the Courteſie makes a preſent Leaſe, if this ſhall be good againſt the Iſſue of the Iſſue, after the death of Tenant by the Courteſie.

Points upon the Statute.

1. IF a Feme Covert ſole Merchant be within the Statute.

2. If the Husband of ſuch a Feme by her Bankrupting ſhall be alſo a Bankrupt?

3. If the Outlawry of the Husband for the Wives debt ſhall make the one, or the other, or both Bankrupts?

4. If the Lands or Goods of the Husband ſhall be ſold for the Debts of the Wife?

5. If the inheritance of the Wife ſhall be ſold?

6. If one born upon the Coaſt of *Flanders* is born out, or within the King's Dominions?

7. If one born in the Port of *Diep*, is born within the King's Dominions?

8. If the Wife of an Alien ſole Merchant be within the Statute?

9. If a Wife Alien, and the Husband *Engliſh*, be within the Statute?

10. If the Eſtate of Tenant in tail a Bankrupt ſhall be ſold?

11. If by Entry of the Commiſſioners and Sale the Vendee ſhall avoid a Leaſe, which Tenant in tail a Bankrupt might have avoided?

1. If one may releaſe to the uſe of another, or if an uſe can be raiſed upon a releaſe, and it may for three reaſons:

A Releaſe may be upon condition, for there the caſe was put in *Libro*, and conſequently to an uſe. But by 43 *Aſſ.* 12. the condition and the releaſe ought to be both in one Deed.

17 *Aſſ.* 2.
31 *Aſſ.* 32.

2. Secondly, it is a good proof, that a releaſe to a Diſſeiſor may be to an uſe, when a Diſſeiſin may be to an uſe; as 34 *Aſſ.* 12. 37 *Aſſ.* 8. 1 *H.* 5. 4. 15 *E.* 4. 15. All is in the Diſſeiſor until agreement; And 2 *H.* 7. 16. If one diſſeiſe another to the uſe of a third, the firſt is Tenant until agreement, but after all is in him to whoſe uſe, although not to be puniſhed for the force.

3. My third Argument is taken out of the Book of 17 *E.* 3. 5. where it is ſaid, That if the Diſſeiſee take homage of the Diſſeiſor, he ſhall never have an Aſſiſe, for now they be Lord and Tenant, when at firſt the Diſſeiſor was in the poſt, and deſtroyed the Diſſeiſees Eſtate, and held of the Lord Paramount: So I hold that if before the Statute of *Quia Emptores Terrarum*, the Diſſeiſee had releaſed to the Diſſeiſor, the Diſſeiſor muſt have held of him, although it is true, that ſince that Statute, a releaſe of all his right in the Land, releaſes his Seigniory, as 34 *Aſſ.* But *Temp. E.* 1. *Aſſ.* 423. In a Writ of Entry in the Poſt of Diſſeiſin made by A. to the Demandants Grandfather, which A. infeoffed the Grandfather of the Tenant, the Tenant anſwered, after A. infeoffed my Grandfather, your Grandfather confirmed and releaſed to my Grandfather, reſerving homage, and my Grandfather did homage to yours, and my Father to your Father, *&c.* But he relied upon the Deed, a Tenure was reſerved upon the confirmation, in which Caſe a releaſe makes

makes a degree; See my *Moot* Book, *fol.* 121. Then if an uſe may be raiſed out of the poſſeſſion of a Diſſeiſor, if a condition out of a releaſe, and a tenure out of a confirmation, by the ſame reaſons an uſe may be raiſed, or declared by releaſe.

2. Two Diſſeiſors and they intermarry, it may ſeem they are mutually and reſpectively in by title, for if the Husband make a Feoffment of his moiety, yet he hath title to be Tenant by the Courteſie of her part, and ſhe hath title of Dower to his part after the Feoffment which is in ſeverance of the Joynture.

Kelloway's Caſe, *Incerti Temp. fol.* 129. This Caſe is well debated, which was, A. Feme ſole, and A. Joynt-Tenants, ſhe marries B. A. releaſes to B. whether this ſhall inure to the Husband only, or to the Wife.

Keble ſaith, That it ſhall inure to the Baron ſole, for before marriage he might have infeoffed the Baron, and it is no reaſon that he ſhould be hindred to convey the Land to none but the Feme by releaſe, and by the releaſe he ſhall be Tenant in Common with himſelf in right of his Wife.

But by others the Law is contrary, for he might have infeoffed others as well as have releaſed to the Baron, alſo a releaſe to one ſhall be in many caſes to the benefit of another, as a Releaſe to Tenant for Life, *&c.*

9 *Eliz. Dyer* 263. This Caſe ſeems to make againſt me, Baron and Feme, and I. S. were Joynt-Purchaſers, I. S. releaſed to the Baron, nothing went to the Wife; but I ſay, that cannot be, for the Baron and Feme being ſeiſed by intireties, the releaſe could not make them hold the Land by ſeveral moieties.

16. *H.* 9.

16 *H.* 9. *Fitz-Herb.* Releaſe. 45. Nor do I agree that Caſe, for there the Caſe was, that a Woman was Tenant for life, and ſhe takes Husband, the Leſſor releaſeth to the Husband and his heirs, by *Paſton*, he had the reverſion, for the Free-hold of the Husband was in right of his Wife, and the releaſe to him conjoyns that right, but I agree well that the Fee-ſimple ſhall be in the Husband, *&c.*

19 *H.* 6. 35. One makes a Feoffment upon condition that he ſhall make a Feoffment over, if he doth it not, the Feoffer may enter; but if one makes a Feoffment in Fee upon condition that the Feoffee ſhall make a gift in tail, and he doth it, the Feoffee, and not the Feoffor ſhall have the reverſion: So here.

3. If marriage of a poor Maid be a good conſideration to raiſe an uſe, it is good to carry the Fee-ſimple to the Husband, and the intail to the Wife.

Before the Statute of *Quia Emptores Terrarum*, one might have created a Tenure in performance of a charitable uſe, as to make or repair a Bridge, or to keep a Caſtle. 34 *H.* 8. *Brook. p.* 51.

6 *E.* 3. 13. One holds by three pence to aid the Sheriff, and good, and another by four pence of the Wapentake Fine, and good, becauſe for to diſcharge the publick contribution.

12 *H.* 7. 18. Keeping of a Beacon, whereby the Country may be warned when the Enemies come.

11 *H.* 7. 12. The ſame for finding a Chaplain chanting in ſuch a place.

And by the ſame reaſon that a Tenure may be created, an uſe may, and the ſame conſideration.

For before *Qui Emptores Terrarum*, If one had made a Feoffment in Fee without declaring an uſe, it was to the uſe of the Feoffee, for the Law created

ted a Tenure which was a ſufficient conſideration; but after no uſe to the Feoffee, but to the Feoffor, if neither Tenure created, nor uſe declared, and for that a leaſe for life, or for years, or in tail is to the uſe of the Leſſee, or Donee, for the Law will create a Tenure of him in reverſion: So here is a good conſideration to raiſe the uſe of the Fee to the Husband, and the Eſtate tail to the Wife is good, without other conſideration than that Tenant in tail muſt hold of him in reverſion. 24 *H.* 8. *Brook.*

4. Lands are given to a Feme, and her Heirs Females, and ſhe hath Iſſue a Son and a Daughter and dies, if the Husband ſhall be a Tenant by the Courteſie? He ſhall.

Cook lib. 8. *Pains* Caſe is reported, as if before that Caſe the Law had been doubtful, whether the Husband ſhould be Tenant by the Courteſie, when the Wife Tenant in tail had Iſſue which dyed, and ſo ſhe dyed without Iſſue.

For the Eſtate was determined, and this was the reaſon that Leaſes for life, or years are not good againſt the Leſſor, for *Ceſſante Statu primitivo*, &c. yet one may be Tenant in Dower without Iſſue, and therefore the Eſtate tail will continue to ſome purpoſes: 21 *Edw.* 3. Dower after a Dying ſeiſed without Iſſue.

21 *H.* 3. Dower 198. Tenant by the Courteſie may be, although the Iſſue dye before the Wife.

16 *E.* 3. Aid 129. One may be Tenant by the Courteſie of the moiety of Gavelkind without Iſſue by the Cuſtome there.

Reppes Caſe, the Child was ripped out of his Mothers Belly, and ſo after the death of the Feme the Baron could not be Tenant by the Courteſie.

But this Queſtion riſes upon the Caſe put in *Pains* Caſe;

Caſe; Lands are given to a Feme and her Heirs Males, and ſhe hath Iſſue a Daughter, and dies, the Husband ſhall not be Tenant by the Courteſie; for although a Man ſhall be Tenant by the Courteſie, notwithſtanding the Eſtate tail be ſpent, yet his Eſtate muſt begin by an Heir heritable to the Eſtate. Here in our Caſe the Son was the Heir, and by him the Father would have been Tenant by the Courteſie to all other his Wifes Lands, but not to this; But although a Female cannot be Heir that hath a Brother, yet ſince the Statute of *Donis*, and by the Equity of that, a Daughter may be Heir by *Cook*, in *Shelley*'s Caſe, notwithſtanding that he had alſo a Son, *fol.* 103. and ſo here he may be Tenant by the Courteſie for this Land by the Daughter, and of other Land by the Son, if the Wife had been Tenant in tail of other Lands to her, and her Heirs Males.

5. Tenant by the Courteſie is, and Tenant in tail in reverſion makes a leaſe to commence preſently, hath Iſſue and dies, Tenant by the Courteſie dies, if his Iſſue ſhall avoid the Leaſe.

This Queſtion is grounded upon the words of the Statute of 32 *H.* 8. which gives power to Tenant in tail to make Leaſes; Provided always, that this Act, *&c.* ſhall not extend to any Leaſes to be made of any Mannors, *&c.* being in the hands of any Farmer or Farmers, by vertue of any old Leaſe, unleſs the ſame old Leaſe be expired, ſurrendred or ended within one year after the making of the new Leaſe; and upon this Clauſe hath riſen many Queſtions; as Tenant in tail makes a Leaſe for Forty years not warranted, and Ten years after makes a Leaſe for Twenty One years to another warranted: Within a year Tenant for Forty years ſurrenders,

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ders, Tenant in Dower ſurrenders to the Iſſue in tail upon condition, Tenant in tail makes a Leaſe, *&c.* Tenant in Dower enters for the condition, and dies, and Tenant in tail dies, if the Iſſue may enter?

Tenant in tail makes a good Leaſe for One and Twenty years, Tenant for years ſurrenders upon condition, Tenant in tail makes another Leaſe for One and Twenty years, or three lives, the firſt Tenant in tail enters for the condition broken; By *Philips*, the ſecond Leaſe is good; *Cook contra* in *Elmers* Caſe *lib.* 5.

And my Queſtion is, whether Tenant by the Courteſie be within thoſe words Farmers, *&c.* and he is not?

Foſter in his Reading upon this Statute, vouched one *Richards* Caſe, That Tenant by the Courteſie was no ſuch Farmer.

Points upon the Statute.

1. IF a Feme Covert ſole Merchant, by the Cuſtom of *London*, ſhall be within the firſt Branch, or Diviſion of this Statute, which is, uſing the Trade of Merchandizing, or getting their living by, *&c.* ſhe is.

That there is ſuch a Cuſtom in *London*, and mentioned, and allowed in our Books.

Cuſtom *Br.* 43. *Ley Br.* 74.

1 *E* 4. *fol.* 6. An Action being brought in C. B. for ones Board in *London*, he would wage his Law, not. And the difference put between Cuſtoms which go with the Lands, as Gavelkind, Borough Engliſh, *&c.* and Cuſtoms of Courts, good within the Town, but not here, but a recovery by ſuch Cuſtom may well be pleaded here in this Caſe, *Littleton.* *Pil-*

Billing ſaith, A Feme Covert, ſole Merchant, by the Cuſtom of *London*, ſhall be impleaded ſole here,

35 *H.* 6. *fol.* 28. The Queſtion was, Whether the property of the Kings Jewells could be altered or forfeited, becauſe they were pawned, and forfeited in *London*. By *Needham*, in the Exchequer Chamber upon an Information: Cuſtom *Brook* 5. and Pledges 28.

21 *H.* 7. 17. Departure, *Brook* 10. in caſe of a Departure, becauſe he had intituled himſelf by a new matter, that is, by a Cuſtom which he might have pleaded.

9 *E.* 4. 35. A Feme removed by *Habeas Corpus*, objected by *Pigot*, that ſhe and her Husband were both arreſted for the Femes debt, becauſe a ſole Merchant, and prayed that ſhe might be remanded, for they have no remedy here, this had been allowed and granted to him, had not the Woman come in charged with a *Reddidit*; So upon an *Exigent*.

The Cuſtoms of *London* have been confirmed by Parliament, 1 *E.* 37. *R.* 2. and admit that ſhe could not be ſole ſued here, as in the Courts of *London*; yet if a Contract made by her ſhall bind the Husband by the Cuſtom, the Husband ſhall be ſued here, and it ſhall be ſaid, the Contract of the Husband, as 21 *H.* 7.

2. The Husband ſhall be bound by the Contract of his Wife, if he command before, or agree after, and it ſhall be accounted his folly to ſuffer his Wife, and ſo they be both Bankrupts.

To put caſes how the Husband ſhall be prejudiced by the Act of his Wife.

49 *E.* 3. 25. The Husband ſhall not be charged with the debt of the Wife which ſhe owed before marriage after her death, but if an Action during the Coverture were brought againſt the Baron and

Feme, and Judgment were had againſt them, and ſhe dies, the Husband ſhall be charged.

20 *H.* 6. 22. If the Wife buy any thing by the Husbands commandment, or that by his allowance comes to his uſe, he ſhall be charged.

9 *E.* 4. 24. Debt againſt Baron and Feme, the Baron appeareth, the Feme makes default, the default of the Wife is the default of the Husband.

Nat. Brevium 120. *G.* A man ſhall be charged by the Contract of his Servant or his Wife, if he gives them Authority, otherwiſe not.

12 *H.* 7. 24. The Baron ſhall pay Mony in the Spiritual Court, which was charged for corporal puniſhment of the Wife for a ſlander. And ſo it is at our Law, for all Slanders and Batteries, as we ſee every day.

20 *H.* 7. *Kello.* 61. A Feme Diſſeiſor takes Husband, who occupies the Land without notice, or cognizance of the Husband, yet he ſhall pay damages. I conclude, her Merchandizes are his by the Common Law, and by the Cuſtom.

3. For all the Reaſons aforeſaid, the Outlawry of the Husband ſhall make him a Bankrupt by the Statute, and ſhall make the Wife a Bankrupt by the Cuſtom, and the Statute.

Which is plain againſt all, uſing Trade of Merchandizing, and getting their living by Buying and Selling, and that if he be *non ſolvent*, as he muſt needs be by his Outlawry, then ſhe muſt be *non ſolvent*; but whether the Creditors by the Commiſſion ſhall have the Goods, or the King by his Outlawry, That is a Queſtion, that comes not within the compaſs of this Caſe, but I ſhall move that ſome other time.

4. But I put the Husband to be dead before the Com-

Commiſſion, and whether his Goods or Lands ſhall be ſold afterwards is a Queſtion, but not properly upon this Statute; for the death of a Bankrupt is not provided for by this Statute, but plainly by the Statute of *primo Ja.* the laſt Clauſe; and I think that even for the debt of ſuch a Wife, it ſhall be ſold after his death: and although I put it, that a Feoffment is made to him by the Son, which cannot work by way of Livery, becauſe he was Tenant in tail, yet if the Donor will enfeoffe the Donee by Deed, this will work to the increaſing of his Eſtate by way of confirmation, *7 H. 6.*

5. If the Inheritance of the Feme ſhall be ſold?

She hath power to forfeit it by Attainder, or by *Ceſſavit*; and by this Statute they may ſell all the Bankrupts Lands lawfully, that is, by any lawful courſe of Conveyance depart with all.

6. The Commiſſion ſhall be in force againſt her after the death of her Husband, for if her Husbands death ſhall not help his Heir, *a Fortiori* it ſhall not help her that lives.

Alſo, as the credit of the one, was the credit of the other; for who would truſt a Woman whoſe Husband was known to be of no credit; ſo the offence of the one, is the offence of the other; and the gains of the one, the gains of the other.

7. But if this Man and Woman be both Aliens, then neither of them are within this Statute, but another courſe muſt be taken with them, by the Statute of *H.* 8. *cap.*

The Woman was born upon the Coaſts of *Flanders*, and the Man in the Port of *Diep*, and I hold them both born in the Kings Dominions; for him that was born in the Port (I mean in a Ship lying

at that Port Town) there is ſmall queſtion, but it is within the Kings Dominions.

It is ſaid of King *H.* 2. That he was the greateſt King that ever was in *England*, for he had all the Land and Sea under his Dominion from the *Orcades* to the *Pireneian* Mountains, which ſever *France* and *Spain*; *England* and *Scotland* he had by the *Norman Conqueſt*; they and *Normandy* were laid together by *Hen.* 1 *Anjou*, *Tourain*, and *Main*, were the Inheritance of his Father, the firſt *Plantagenet*; *Poytiers* and *Aquitaine*, he had by his Wife; *Britainy* held of him, as of his Dukedom of *Britainy*; ſo as all the Sea Coaſt, even from *Calis* to St. *Sebaſtians* in *Spain* was his; ſo that the *French* King had no way nor paſſage to the Sea, nor Juriſdiction in the Sea: It is true, that by the Attainder of King *John* for the murthering of Prince *Arthur*, a great part of all this was ſeized by the King of *France*, and in the end by *R.* 2. *H.* 6. and Queen *Mary*, all the Land was loſt, but the Sea was never loſt, witneſs the Iſles of *Alderney*, (which ſtand within three Miles of *France*,) and *Gerſey*, and *Garnſey*, which the *French* to this day could never conquer, and yet they ſpeak *French*, and indeed are all that is left to the King of *England*, that was any part of the Dukedom of *Normandy*.

But the Coaſts of *Flanders* is more doubtful, for *Flanders* was never in the Juriſdiction of the King of *England*, but yet they were never Maſters of the Sea. The Lord Admirals Juriſdiction that he claims, is at this day as well of the *German* Ocean, as in the *Straights*; and we ſay, the *Dutchmen* do us wrong to Fiſh in theſe Seas.

8. But admit the Woman is an Alien, yet I take it, if her Husband be an *Engliſhman*, they ſhall be both Bankrupts within the Statute, he (as I ſaid) by

by the Law, and ſhe by Law and Cuſtom; for as the Cuſtom will allow her to be a ſole Merchant if her Husband be a Citizen (altho' ſhe be an Alien) ſo likewiſe ſhall her Eſtate be ſubject.

9. But if he be an Alien, yet all will be one for his Goods, but his Lands are the Kings; for if he will Trade and Traffique by his Wife, and her Credit being *Engliſh*, and having Land, and ſo have and enjoy the Priviledges and Benefits of a Subject by his Wives legitimation, her Land, and the Cuſtom of the City there, it is no reaſon but that he ſhould be ſubject to ſuch Laws as other Subjects are.

So, as if the Wife be an Alien, and the Husband a Subject, or the Husband an Alien, and the Wife a Subject, they are clearly in both caſes within the Statute for Goods; but my Caſe is for Lands, and in my Caſe I hold them both born within the Kings Dominions.

10. But the greateſt Queſtion in my Caſe, and a thing never yet put in ure or queſtioned is, if a Bankrupt is Tenant in tail, if by the ſale of the Commiſſioners the iſſue in tail ſhall be barred? they ſhall; for the words of this Statute, and of the Statute of 26 *H.* 8. are all one, The words of 26. are;

If any perſons ſhall be attainted of any High Treaſon by courſe of the Common Laws, they ſhall forfeit to the Kings Majeſty their Lands, Tenements, and Hereditaments, wherein they have any Eſtate of Inheritance.

Our Statute is, That *the Commiſſioners by Deed enrolled, may ſell the offenders Lands, Tenements, and Hereditaments, as well Free as Copy*, &c. in neither of theſe Statutes are intailed Lands mentioned.

But we ſee in *Walſingham's* Caſe, *Plowd.* and in

Dowghties Caſe, and in common experience, that an Eſtate tail is forfeited, by 26 *H.* 8. 13.

But you will ſay in 26 *H.* 8. there be words more to carry it, than in your Statute, for that ſaith, any Eſtate of Inheritance, and an Eſtate tail is an Eſtate of Inheritance; but our Statute hath words which tant amount, for ours is of all Lands, Tenements, and Hereditaments, which he or ſhe may lawfully depart withal, and Tenant in tail may lawfully by fine cut off his iſſue.

And it is ſet down for Law, that a gift in tail, with condition that the Donee ſhall not levy a Fine, is unlawful, & void, and repugnant condition; for it is ſaid in *Mary Portington's* Caſe, there be three incidents to Eſtate tails, at the Common Law, by Statutes, and by Cuſtom; By the Statute of 32 *H.* 8. *cap.* 28. to levy fines, and no condition can take away that from an Eſtate, that is incident to the Eſtate, as it is put of Dower, Tenant by the courteſie.

11. The laſt is upon my concluſion, admit that the iſſue in tail could avoid the Leaſe, whether the Vendee hath the ſame priviledge?

If Tenant in tail make a Leaſe not warranted, and dies, and the iſſue levy a fine before entry, 33 *H.* 8. *Dier*, The Conizee ſhall not avoid the Leaſe.

8 *E.* 3. *p.* 22. The ſame is if he accept the Rent, or confirm the Leaſe before entry. The Lord *Bedford's* Caſe, *Cook lib.* 7. The Kings Gardian ſhall avoid.

The King hath the Temporalities of a Biſhop, he ſhall avoid, and all this is for the benefit of the Heir, or Succeſſor; and ſo in our caſe it is for the benefit of the Bankrupt, for in the end they muſt account with him, and he will ſay, that by their means he ought not to loſe his election and benefit of the Leaſe.

The

The first Case of the second Division.

A and B. Diſſeiſe C. (who in conſideration that A. at his requeſt had married a poor Maid) releaſes to A. and his Heirs, to the uſe of B. and his Heirs Females of his Body; they have iſſue a Son and a Daughter, B. dies, the Daughter makes a Leaſe to M. for one and twenty years, rendring the ancient Rent, and dies, having iſſue E. a ſole Merchant born upon the coaſts of *Flanders*, and married to F. a Citizen of *London* born in the Port of *Diep*, A. grants the reverſion to F. who is outlawed for the debt of his Wife, and A. dies, M. enters.

The Wife is a Bankrupt, and the Land ſhall be ſold charged with the Leaſe to M.

Points upon the ſecond Caſe of the ſecond Diviſion.

1. TEnant in Gavelkind of a Houſe purchaſes Eſtovers out of Land, in Borough *Engliſh*, to be ſpent in the Houſe, he dies, his Brother makes partition, if the Eſtovers ſhall deſcend all to the elder, or ſhall be divided, or if by the diviſion of the Land they are extinct?

2. Two Brothers in Gavelkind, the one is executed for Felony, if the Cuſtom, *the Father to the Bough*, &c. holdeth place between Brothers, as between the Father and the Son?

3. If one born in *Virginia* is a Subject born?

4. If the exchanging of Gold for Silver, which is an unlawful act, is buying and ſelling within the Statute?

5. If a Debt recovered by Information by an Informer, makes the Informer to be a Creditor?

6. If remaining in Execution ſix months at the Sute of the King, makes him a Bankrupt?

Upon the third Caſe.

1. A Feoffment to two, and they intermarry, the Livery is made, if the marriage interrupts the Livery?

2. If the Leſſee is remitted when he enters only to make Livery?

3. A Feoffment to B. and a Feme an Alien, how they ſhall take, and what part the King ſhall have?

4. If one naturalized is within the Statute?

5. If a Church-Warden a Bankrupt keeps the Church, if that be a keeping of his Houſe, or taking Sanctuary within this Statute?

The third Diviſion.

1. WHat ſhall be ſaid a Departing of the Realm.

2. A beginning to keep his Houſe.

3. An abſenting himſelf.

4. Taking of Sanctuary.

5. A ſuffering himſelf willingly to be Arreſted.

6. A ſuffering himſelf to be Outlawed.

7. A yielding himſelf to Priſon.

8. A departing from his Dwelling Houſe.

A Grantee of a next avoidance preſents A. by parol to a Benefice of 5 *li.* value *per Annum*, he is inſtituted, B. a Merchant and Farmer in *Ireland*, and

and indebted, by agreement with the Grantor, and the Ordinary pays 10 *li.* to the poor, and is made a Miniſter, and preſented; A. dies, B. is inſtituted and inducted, and after is inducted to another Benefice, and recovers glebe to the firſt of 20 *li.* value *per Annum*, he renders himſelf to the Priſon of the Admiral for Treſpaſs in *Ireland*, the Pariſhioners detain their Tithes, the Grantee preſents to the firſt Benefice, and his Clerk is inſtituted.

The Incumbent is a Bankrupt within this Diviſion, and the Aſſignee of the Commiſſioners ſhall have Debt upon the Statute for the Tythes, and the Farm in Ireland.

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3. *Points upon the Statute of* 31 Eliz. *cap.* 6.

1. IF a preſentation in conſideration that the Preſentee gave money to the poor, is Simony?

2. If the Ordinary's makeing a Miniſter in conſideon that he gave money to the poor, makes the Benefice void immediately after his Induction?

3. If the Pariſhioners may refuſe to pay their Tythes to a Simoniſt?

One Point upon the Statute of 21 H. 8. *cap.* 13. *of Pluralities.*

ONe hath a Benefice of 5 *li.* value, accepts a Benefice of 10 *li.* value, and afterwards recovers Land, to the firſt of 20 *li.* value *per Annum*, whether this makes the firſt void by the Statute?

Three

Three Points at Common Law.

1. IF a Preſentation by parol be good?

2. One hath the next avoidance, and preſents, and his Clerk is inſtituted, and dies before induction, if his turn be ſerved?

3. One Preſents, and his Clerk is inſtituted, and before induction, another preſents, the firſt Preſentee dies, the ſecond is inſtituted, if good?

Points upon the Statute de Bankrupts.

1. IF a Merchant turning Prieſt, and then becomes *non ſolvent* of his former debt, be a Bankrupt within theſe words, *Uſing or exerciſing the Trade of Merchandizes*?

2. Whether lying in Priſon in the Admirals Court, for a Cauſe whereof they have no Juriſdiction, be a yielding of himſelf to Priſon, and if they have Juriſdiction?

3. Whether Creditors of *Ireland* may ſue here, that is, whether a man may be Bankrupt here for Debts in *Ireland*?

4. Whether Debts given by Statute for Tythes be liable to his Debts? A Statute giving an Action of Debt, this Debt may be transferred.

5. Whether Goods in *Ireland* may be ſold by Commiſſioners here?

1. Grantee of a next avoidance preſents A. by parol, to a Benefice of 5 *li.* value, and the Clerk is inſtituted.

The reaſon as it ſeems why one cannot preſent by parol is, *quia* (as *Linwood* ſaith) *Laicus poteſt vari-*

are,

are, and then if he name one, one day, &c. *dif. qt. Clericus & laicus præſentat.*

Again, it may be ſaid, that it is an Authority given to the Ordinary, and Authority ought to be by Writing, and ſo all things not manurable, as to be Attorney, grt. of Rents, Advowſans and Reverſions.

But to this the Divines ſay, they receive the Authority from the Patent, but as they do confeſs that for Tythes, Teſtaments and Marriages, they had of the gift of the Laity; ſo the Laymen have the nomination, &c. from them, for before Churches were indowed with Lands, *&c.*

But I intend this no queſtion; our Books are direct, that an Infant may preſent. So is

8 *E.* 2. *Fitz. præſ.* 10. If Gaurdian by nurture preſent, it muſt be in the Infants name.

27 *E.* 3. *fol.* 89. The reaſon is, for he ſhall be Gardian of nothing but for that which he may account.

26 *H.* 6. *Grts.* 12. One may preſent by a Letter Miſſive.

19 *E.* 3. *qua. imp.* 60. For direct authority by *Huſey*, *quod fuit conceſſ.* the King may preſent by parol.

But Merchant of *Ireland*, and indebted, agrees with Patron, and Ordinary, that for 10 *l.* given to the Poor, the one ſhall preſent him, and the other make him Miniſter; and here riſes two of my Queſtions upon this Statute of 31 *Eliz.*

The Statute names not Simony, but ſaith, *if any for Money, Gift, Reward, or Profit, directly or indirectly*, &c. whether giving 10 *li.* to the Poor to be preſented be Simony.

2. *M. Juſtice D.* and others that have read here before

fore me do vary, all agree, that to do charitable acts, as to build a Bridge, marry a poor Maid, preach three times a Week, to teach a School, is Simony. But to give to the Poor ſome ſay it is not, for *Bona Eccleſiæ ſunt partimonia pauperum*, the Apoſtles diſtributed *communes diſtributiones, & quotidianas diſtributiones*, at *Lincoln* to this day *Linwood* Sacriledge.

But I hold it is, for as in our Caſe, if he pay it before hand, it goes out of his own Purſe, if afterwards, though it go out of his Benefice, yet it is to be intended this is benefit to the Patron, for ſince the Statute of 39 *Eliz. cap.* 3. made for the relief of the Poor, the more the Parſon gives, the leſs the Patron needs give, and Charity ought to be voluntary, and not for hope of a Benefice, or a Reward.

But I will agree, that if it had been in conſideration, that he ſhall maintain the Patron, if he be at any time in want during his life, this is no Simony.

Patronum faciunt dos, edificatio, fundus, Patrono debentur, honos, onus, emolumentum.

Linwood fol. 157. *De beneficiis, eſt & onus alendi Patron. Eccleſiæ ubi ad ſummam pervenit paupertatem, Ergo*, &c.

But this is likewiſe given to the poor, to the end that he may be made Miniſter.

Whether this be Simony? I think this is Simony in the higheſt degree; and the very ſame which *Simon Magus* would have committed, for he offered the Apoſtles money to be admitted into the Miniſtery, he knew and ſaw, that they received nothing to their own private uſe, all things were common with

with them, and as I ſaid, they diſtributed to every man as he had need; yet you all know how he was anſwered, and what became on him, even *eo quod voluit*, and yet *non potuit quod voluit facere malum.*

But the Statute *for gift, reward, or benefit*, to the Ordinary or any Friend of his, and ſo thought to be Simony in Spiritual Law, yet it is not within the Statute; yes indeed it is, for even as they ſay, *Si quis aliquid dederit alio quam præſentandi aut ordinatori ſi alias beneficium non eſſet habiturus, eſt Simonia.* But then ſaith the Statute, if ſuch a Miniſter be to be preſented, inſtituted, and inducted into any Benefice for ſeven years after, that immediately after the induction, the Benefice ſhall be void, and it ſhall be lawful to the Patron to preſent another.

But here is the Queſtion upon this Statute, by the firſt branch the King is intituled, by the ſecond, the Patron, but the Kings intereſt makes it no induction at all.

A. dies, and B. is inſtituted and inducted.

4. But admit here is no Simony in the Caſe, then riſeth another Queſtion, Whether here be any good preſentation or not? Where the Caſe is no more but this, one preſents, and his Clerk is inſtituted, one other preſents, the firſt Clerk after inſtitution, and before induction dies, whether this preſentation when another was inſtituted, be good at all? Or whether his death before induction have made it good, whereby the ſecond may be inſtituted, and inducted?

It is plain, if one preſent in the life time of the incumbent, the preſentment is void.

22 *H.* 6. 27. By admiſſion and inſtitution one is Parſon before induction, and *Linwood* ſaith, he hath *jus ad rem, & in re.* But 5 *Eliz. Dyer*, he hath *jus ad*

ad rem, but not *in re*, and *Hare* and *Buckley's* Case, he is like a Tenant in Dower, that hath Judgment, but no Execution. Or like a Copy-holder after a Surrender, and before admittance, but neither to charge, nor bring action. But as in my Lord *Digbie's* Case in *Coke l.* 4. A Parson having one Benefice, is instituted into another, and then gets a dispensation, and then is inducted, the induction shall so relate, that the dispensation is of no force. So his death shall make that he had by the institution no interest at all, but that the second presentation is good, and consequently the induction; But if in the life time of *A. B.* had been both presented, and instituted, the institution had been meerly void, and then the induction could never be good, 13 *Ja. B. R.* if it be not in the Kings Case.

5. Afterwards *B.* being inducted into the Benefice of 5 *l.* value, is inducted into another, and then recovers Lands of 20*l.* value to the first, whether this first be void by the Statute, 21 *H.* 8. and I take it, it is not.

The Statute is, *That having a Benefice of* 8 l. *accepts of another, and is inducted into the same, then the former Benefice shall immediately be adjudged to be void.* And altho' I am of opinion, that this Law shall be taken strict, and even extended by equity, because it is to repress a great inconvenience in the Church, and Common-wealth, That yet nevertheless this word, having, shall be construed, as it is in the Statute of 32. of Wills in *Buttler* and *Bakers* Case, *pro ut* the Case, so here: And here is also this word immediately, which is much inforced there, because the Land could not descend immediately till disagreement.

A man infeoffs a Feme Covert, and then grants

rent

rent charge, the Husband dies, ſhe waves, if ſhe had agreed, it would have avoided the charge, and yet the diſagreement ſhall not make it good.

But I cannot compare it to a better Caſe than the Caſe of a Ward, the Rule is, If Tenant in Knights ſervice die ſeiſed, his Heir within Age ſhall be in Ward, with this addition to the Rule, that if he were diſſeiſed and might enter, or if he had made a Feoffment upon Condition, and the Condition were broken, if the Lord, or the Heir enter, he ſhall be in Ward; or if the Tenant for Term of Life of a Ward make a Feoffment, and the Heir enter, the Land ſhall be in Ward. So be the Books of 17 aſſ. 18 aſſ. 18. 19 *E.* 3. *Gard* 114, and 48 *E.* 3. fo. 8. But 12 *H.* 7. 20. *Frowick*, if the Heir recover by action Aunceſtrell, he ſhall not be in Ward.

15 *E.* 4. 13. *Urſwick* chief Baron the ſame, or if he pay money to redeem Land, and enter for the Condition performed, he ſhall not be in Ward, ſo here I hold the ſame Rule, if *B.* had been diſſeiſed of parcel of his Glebe, or that it had been forfeited for a Condition broken, the firſt Benefice would have been void, but not in this Caſe, I hold, that if his Rectory were a Signiory, and but of 5 *l.* value, and then he accept a ſecond Benefice, and afterwards by the Eſcheat of a Tenancy it had come to be of 8 *l.* or 10 *l.* value, it ſhall not in this Caſe be void.

6. But this Clerk was a Marchant, and turns Prieſt, and now leaves his old debts unpaid, whether he can be a Bankrupt, becauſe of the words, *uſing the Trade*, &c.

He is ruled in *John Quarles* Caſe; my Lord Chief Juſtice being Recorder, was a Commiſſioner, for he left his Marchandizing, and was turned Gentleman.

7. Whether yielding of himſelf to Priſon in the Admirals

Admirals Court in an action, whereof their Court hath no Juriſdiction, be a yielding himſelf to Priſon, within the Statute.

The Admirals Juriſdiction is limitted by the Statute of 13 *R.* 2. *cap.* 5. that they ſhall not meddle with things done within the Realm *ſcil.* this Realm. 15 *R.* 2. *cap.* 3. *de South les points*, 2 *H.* 4. *cap.* 11. gives an action, and double damages.

There was a Caſe in the Common Pleas.

I take it, the Admiral hath no Juriſdiction to hold Plea of a thing done upon the Land in *Ireland*, for he is Admiral both of *England*, and *Ireland*; ſo the King hath his Juſtices there for to give juſtice for treſpaſſes and offences there done, firſt for that theſe Statutes are in force in *Ireland*, as all other are, which were made before 1 *H.* 7. And a Prohibition will lie here in the Kings Bench, if they hold Plea of a thing, whereof they have no juriſdiction, although they cannot hold Plea thereof themſelves, as we ſee in the Orphans Caſe in *Coke li.* 5. and theſe Courts ought to reſpect them of *Ireland*, as ſubordinate to them for 34 Aſſiſes. Errors here upon a Judgment there.

31 *H.* 8. *Bro.* Prohibition 17. A Prohibition lies againſt the Admiral, when he ſuppoſeth a thing to be done upon the Sea which was done upon the Land.

8. The Pariſhioners detain their Tythes.

The Queſtion is, A man is preſented by *Simony*, the Statute is, the Preſentation, the Inſtitution, and Induction are all void. But it is to give title to the King to preſent. But to the Pariſhioner he is *dominus pro tempore*, as if he had been meer *laicus*; yet Sacraments miniſtred by him are of force.

The Church, and the Miniſter are compared to the

the Husband, and Wife; A Woman is married to one Husband, and *in facie Eccleſiæ*, ſhe is afterwards married to another, as the Prieſt is actually *in facie* of the Country inducted, 17 Aſſ. 32 *H.* 6. The Feme with her ſecond Husband, levy a Fine, none can avoid this Fine, but the right Husband, no more can any diſplace the Simoniſt, but the King.

And a Prohibition hath been awarded againſt a Parſon, ſuppoſing he was a Simoniſt, and upon advice, and conſultation the Parſon Cloſes, *B. ver. (Simony)* in the Exchequer, another preſented by the King, and yet all one for the mean profits.

9. The Grantee preſents to the firſt Benefice, queſtion, whether I grant one *Primam & advocationem proximam* & he preſents, and his Clerk is inſtituted, and dies before induction, whether his turn be ſerved? It is, 38 *E.* 3. 36. 6. *vide lib.*

10. That Commiſſioners here may ſell a Bankrupts Goods in *Ireland*, and Iriſhmen may ſue the Commiſſion.

11. The firſt is within the expreſs words of the Law, *ſcil.* being alſo a Subject born.

The ſecond is proved by the Caſe of the Merchants of *Waterford*; 2 *R.* 3. 11. An Act of Parliament in *England* ſhall not bind men of *Ireland* for their Lands, but for things tranſitory it ſhall, as the Caſe was there for ſhipping of *Wools* from *Waterford*, to carry to other places than *Callis.*

Alſo a man attainted here of Felony, or Treaſon, ſhall loſe his Lands in *Ireland.* My Lord of *Eſſex*, and *Ororkes* Caſe.

12. An action of debt upon the Statute by the Statute of *primo Jac.* which gives not only all things in Action, but alſo gives an Action to the Aſſignee in his own name, but he muſt declare ſpecially.

UMI - 1994

1. *A.* makes a Leaſe of a Rectory to the King for another mans life, and grants the reverſion to *B.* a Merchant to the uſe of *B.* and *C.* the King grants his Eſtate to *D. E.* enters, and marries with the Merchant, *C.* dies, *D.* releaſes to *B.* who being *non ſolvent* keeps his Houſe, the Tythes are ſequeſtred for not repairing of the Quire, the Creditors grant a Letter of Licenſe to *B.* for ſix months, *E.* dies, *D.* enters, he for whoſe life dies, *B.* renders himſelf to Priſon for a Fine aſſeſſed before the High Commiſſioners, ſix months paſt.

B. *Is a Bankrupt within this diviſion, and the Moiety of the Rectory ſhall be ſold, and all the goods ſequeſtred.*

1. The King tenant *pur auter vie*, the leſſor grants the reverſion, if good without Atturnment: It is good.

2. A grants to *B.* to the uſe of him and *C.* if they are Jointenants, or Tenants in Common? they are Tenants in Common.

3. Tenant for life is diſſeiſed by a Feme ſole, ſhe marries him in the reverſion, the diſſeiſee releaſes to the Husband, it is good to extinguiſh his right.

4. What is wrought by the occupancy: nothing.

1. If a Bankrupt procures a Letter of Licenſe for ſix months, and within the time is a Bankrupt again: if he ſhall be a Bankrupt *ab initio*? He ſhall be.

2. If Impriſonment by the High Commiſſioners is within the Statute? It is.

3. If the Goods of a Bankrupt ſequeſtred ſhall be ſold? They ſhall.

2. *A.* Deviſes 20 *l.* to *B.* and *C.* and 200 Acres of Land to *D.* and *E.* his Executors, *D.* proves the Will,

E.

E. waſtes the aſſets, and dies, *D.* a Merchant makes a Feoffment of 99 Acres to *F.* *D.* is *non ſolvent*, and outlawed in *Ireland*, *B.* and *C.* joyn with the Creditors in ſuing a Commiſſion.

D. *Is a Bankrupt within this Diviſion, and* 101. *Acres ſhall be ſold, and* B. *and* C. *ſhall be relieved.*

3. Tenant of the King makes a gift in tail, and dies, having iſſue two Daughters within age, the Donee makes a Feoffment to Coparceners, office is found, and the Land being ſeiſed for the King, he grants it to *H.* a Merchant, as long as it ſhall be in our hands, *H.* marries the younger, and is *non ſolvent*, and ſuffers himſelf to be arreſted, at the ſute of a Son born, the other Daughter dies, *H.* confeſſeth the action, and is impriſoned in execution for the damages, the Commiſſioners ſell the Intereſt of *H.* All this is found by another office.

H. *Is a Bankrupt within this Diviſion, and the Vendee ſhall have an* Ouſter le main.

1. Diſcontinuee makes a Feoffment to iſſues in tail within age, if they are remitted, for they are not Tenants in Common, but Jointenants.

2. Tenant of the King makes a gift in tail, and dies, his Heir within age, the Diſcontinuee infeoffs the Infant, if he ſhall be in Ward, becauſe a Purchaſor notwithſtanding the Remitter.

3. Tenant in tail diſcontinues hath iſſue a Daughter within age, and his Wife with Child with a Son, and dies, the Diſcontinuee infeoffs the Daughter, the Son is born, if he ſhall have the benefit of Remitter.

 4. If

4. If the Intereſt of the King by an office, ſhall be deveſted by another office without Petition, or monſtrance *de droit.*

5. If a Merchant being a Diſcontinuee confeſs an action of treſpaſs, at the ſute of the iſſue in tail, and is taken in execution, if it make him a Bankrupt.

4. Grantee of a next avoidance preſents *A.* by parol to a Benefice of 5 *l.* value *per Annum,* he is Inſtituted, *B.* a Merchant and Farmer in *Ireland,* and Indebted there by agreement with the Grantor, pays 10 *l.* to the Poor to be made a Miniſter, and to be preſented, *A.* dies, *B.* is Inſtituted and Inducted, and after that, is Inducted to another Benefice, and recovers Glebe to the firſt of 20 *l.* value *per Annum,* and after he is *non ſolvent,* and renders himſelf a Priſoner to the Admiral for a treſpaſs in *Ireland,* the Pariſhioners detain their Tythes.

B. *Is a Bankrupt within this Diviſion, and the Aſſignee of the Commiſſioners ſhall have debt for the Tythes, and the Farm in* Ireland.

5. Tenant in tail is attainted of Treaſon, and pardoned, the King grants and reſtores to him the Land in tail, the Donor Releaſes, Tenant in tail ſuffers a recovery to the uſe of *B.* a Merchant, and hath iſſue, and dies, the releaſe is Inrolled, *B.* is made Steward of the Tower of *London,* the iſſue in tail enters *B.* is *non ſolvent,* and keeps himſelf in the Tower.

B. *Is a Bankrupt within this Diviſion, and the Commiſſioners ſhall ſell the Land.*

1. If

1. If the gift is within the Statute of 34 *H.* 8. *cap.* 20.

2. If the reverſion be good to the King without Inrollment.

3. If the Inrollment ſhall Relate.

4. If the Tower is comprehended within the Statute, or the Equity *re vera.*

6. *A.* Feme ſole Tenant in tail makes a Leaſe for thirty years to *B.* a Merchant indebted to *C.* and *D.* ſhe marries *E.* hath iſſue *F. A.* and *E.* levy a Fine to *G.* which is reverſed for nonage of the Wife, *B.* lies in Priſon for ſix months, in execution for the debt of *C.* and in that time becomes indebted to the Gaoler for Victuals, the Wife dies, *E.* enters claiming as Tenant by the Curteſie, and ſurrenders to the iſſue, *D.* aſſignes his debt to the King, a Commiſſion is awarded, all this is found by writ of Prerogative, and that *B.* had nothing.

B. *Is a Bankrupt within the Statute, but the King ſhall have the Term, and neither* C. *nor* D. *ſhall be relieved.*

9. Tenant in tail makes a Leaſe for thirty years, and enters into Religion, the iſſue accepts the rent, and dies having iſſue, the Father is deraigned, the Leſſee being a Merchant at *Conſtantinople,* becomes indebted to Engliſh Merchants there, and turns Turk, the Father dies, the iſſue of the iſſue enters.

The Leſſee is a Bankrupt within this Diviſion, and the Term ſhall be ſold.

Caſes upon the fourth Diviſion.

What Lands, Tenements, or Hereditaments of a Bankrupt the Commiſſioners may ſell.

THE King grants the Mannor of *S.* to *A.* and his Heirs, to be holden by the ſervice, to be a Juſtice of the Peace within the Mannor, *A.* Bargains and ſells to *B.* and *C.* his Wife, and to *D.* and after *A.* grants the ſervices to *I. S.* a Tenant to *B. B.* and *C.* are divorced *cauſa Præcontractus* of *C.* with *I. S. D.* is a Bankrupt, a Commiſſion is awarded. *I. S.* attorns, *D.* enters, and manumits a villain, *D.* is impriſoned in his Houſe and is *felo de ſe*, his Heir within age enters, *I. S.* dies without Heir, *B.* and *C.* intermarry, the Deed is inrolled, office is found.

The Commiſſioners may ſell all the Land, and the Goods of the Bankrupt except the Villain.

1. The King grants Land to be holden by the ſervice to be a Juſtice of the Peace: What Tenure this is?

2. A Bargain and Sale to Baron and Feme and a Stranger, and the Baron and Feme are divorced before Inrollment: how they ſhall take?

3. One ſells a Mannor, and before Inrollment the Bargainor grants the ſervices of *I. S.* to one of the Vendees, and he attorns: If the Inrollment ſhall be good for the reſt to others?

4. Bargainee of Land holden in *Capite*, enters, and dies before Inrollment: If his Heir within age ſhall be in Ward?

Upon

Upon the Statute.

1. A Bankrupt hath a Seigniory, a Commiſſion is awarded, the Bankrupt dies, a Tenancy Eſcheats: If the Seigniory, or the Tenancy ſhall be ſold?

2. Tenant in *Capite* is a Bankrupt, and dies, his Heir within age, and in Ward: If the Land can be ſold?

3. A Bankrupt hath a villain, and manumits him: If the Commiſſioners can after ſell him.

4. A Bankrupt is *felo de ſe*: If the Goods ſhall be ſold notwithſtanding the intereſt of the Almoner?

The King grants a Mannor to A. *to be holden by the ſervice, to be a Juſtice of Peace within the Mannor, the Queſtion is, what Tenure that is, if grand ſerjeanty,* Petit *ſerjeanty Tenure by Knights ſervice* in Capite, *or Tenure by Soccage* in Capite?

Neither at the Common Law, nor at any time before the Statute of *Quia Emptores terarum*, there was no Officer in this Common-wealth, called by the name of a Juſtice of Peace, and therefore there can be no Authority of any ancient tenure of that nature; But there were divers Officers, who by virtue of their Offices, and as incident to their Office, were Conſervators of the Peace, as Sheriffs, Coroners, Conſtables, and all the Juſtices of the Kings Bench.

17 aſſ. 5. A Sheriff, or Coroner may take an Appeal, a *fortiori* in the Kings Bench, for there *Scot* ſaith, *That they are the Soveraign Coroners of the Land.* But till 18 *E.* 3. *cap.* 2. the name of a Juſtice of Peace was not known.

But whether ſuch a tenure may be created at this day, is a Queſtion? and I think it may, for the King is not bound by the Statute of *Quia Emptor.* as it is plain by the Books of *Com.* 240. *Bark.* Caſe.

He at this day may create new tenures; and *Marrow* in his Book of a Juſtice of Peace, ſaith, *That if the King grant a man Land to be holden by being a Conſervator of the Peace he is a Conſervator by tenure,* but he doth not determine what Tenure it is Mr. *Lambert* vouches a Record at *Cheſter,* that one *Urianus de Sancto Petro* that held *medietatem ſerjanciæ pacis,* and this, he calls it Tenure *in Capite,* but rather as an Executioner, than as a Judge. It is thus material to the end of the Caſe, what Tenure this is, that if it be Knights ſervice, then here's a Wardſhip, and then it will be a queſtion, whether the Kings intereſt will prevent the authority of the Commiſſioners? if in Soccage *in capite,* then that point is cleared. Some would have this to be grand Serjeanty, becauſe it is to be performed in perſon, and that perſon is to repreſent the Kings perſon, and if (by *Littleton*) it be grand Serjeanty to be a Chamberlain of the *Exchequer,* who is but a Keeper (as it were) of the Kings money, it is grand Serjanty much more to be a Keeper of the Kings Peace: Others would have it Soccage *in Capite,* for it is a Tenure muſt go with the Land, and ſo to a perſon uncapable of the Office (as in this caſe) to an Infant, or to a Woman, who cannot be a Juſtice of Peace. And this is an Office, which cannot be transferred, no more than as it is in *Kelloway* in his caſes *incerti temporis,* fol. 151. If the Office of a Sheriff, or Coroner be granted to one it cannot be granted over, for ſuch an Officer ought immediately to attend on the King without any mean, for the office of a Sheriff, as Sir *John Davies* ſaith well,

well, *&c.* for life, and I am of opinion, that if this grant had been made before *primo* of *E.* 3. it had been a Tenure by grand Serjanty, for then the Tenant could not alien without licenſe upon pain of forfeiture. But now it is otherwiſe, ſo as I am of opinion, that this grant being now made, and in fee, it was a tenure by grand Serjeancy for life in the firſt Patentee, and his Patent was his Commiſſion; But when he doth alien or die it will be a ſoccage in *Capite*; And yet if it ſhould turn to be a Tenure by Knights ſervice in *Capite*, yet I ſhall maintain the caſe at latter end, that the Commiſſioners may ſell the land, notwithſtanding that the heir of the Bankrupt is within age, and in Ward.

2. A Bargain and Sale to Baron and Feme and a ſtranger, and before inrollment, they are divorced, the Queſtion is, how they ſhall take, as three ſeveral Jointenants, or each ſhall have a third part, or whether the husband and wife ſhall be jointenants for either of them a quarter part, and the ſtranger a jointenant with them for a half part?

35 Aſſ. 15. It is plain, that if one make a feoffment to the husband and wife, and a third perſon, the Husband and Wife as one perſon, take the one Moiety, and th'other perſon the other Moiety, vide *Librum.* 7 H. 4. *fol.* 17. That they that be divorced, the divorce will change, and alter their eſtates, as if Lands be given in tayl ſpeciall to an Husband and Wife, and then they are divorced, the eſtate tayl is turned to a freehold, and they are made jointenants, by dividable Moieties whereas before they held by intireties, and yet if they marry afterwards again they are Tenants in tayl again.

3. 39 *H.* 6. 43. The difference is taken between a feoffment before coverture, and after, for if it be before, and then they intermarry, if the Husband alien

alien all and die, the Feme ſhall have a *Cui in vita* but for a Moiety, contrary if it be after marriage; *Copledikes* Caſe 3. rep. Baron and Feme jointenants, the Baron ſuffers a recovery of all, and dies, it ſhall be good for nothing againſt the Wife.

But there have been many Queſtions raiſed, how they ſhall take when a Conveyance is commenced before coverture, and finiſhed after, or as our Caſe is when the Conveyance is commenced during coverture, and finiſhed after Divorce: as if a reverſion be granted to a man, and Feme ſole, and they intermarry, and the tenant attorns, they ſhall take by entireties, becauſe by the Book of 48 *E.* 3. The Attornment ſhall not relate, and yet if a Feoffment of a Mannor be made to a man Feme ſole, and they intermarry, and then the Tenants attorn, they ſhall be in of the whole Mannor by Moieties, becauſe in that caſe the Attornment will relate, as it is proved by *Longes* Caſe, which was *Pa.* 31 *Eliz. Rot.* 2024. One made a Feoffment of a Mannor to which an *Advowſon* was appendent, the Church became void, and the Tenants attorned, it was adjudged that in this caſe the Attornment ſhould relate, and that the Feoffee not the Feoffer ſhould preſent.

But in our Caſe, here be two relations together, the Relation of the Divorce, and Relation of the Inrollment. I have ſhewed, that the Relation of the Divorce ſhall change their Eſtates, and the Relation of the Inrollment will give it them, as they were to take at the time of the enſealing of the Indent. 6 *E.* 6. *Bro.* 6 *E.* 6. two Jointenants, and one Bargains and ſells all the Land, and before Inrollment, the other dies; yet no more ſhall paſs than the Party had at the time of the enſealing of the Deed. Surely the Deed relates to make them

in

in by Intireties, and the Divorce to make them Jointenants, but ſhall this Relation of the Divorce change, or alter the Eſtate of the third perſon. And I take it, this nothing at all concerns the Stranger, nor ſhall it alter his Eſtate, but it ſhall be as a matter of eſtopel binding the Baron and Feme, but not to be reſpected of eſtrangers, and this is proved by the writ of *Cui ante divorcium*, for there the Feoffment of the Husband ſtood as a diſcontinuance till it was defeated:

Lex non oberit tertio extraneo, prodeſſe alteri nemo tenetur, ſed obeſſe vetatur.

48 *E.* 3. 38. Tenant for Life, the remainder for Life, the remainder in Fee, the firſt Tenant for life makes waſte, he in remainder in fee releaſes to him in remainder for life, this ſhall not make him who was the firſt Tenant for life, to be puniſhable in waſte.

43 *E.* 3. 17. An appeal is brought againſt two as Principals, and an exigent is awarded, now the King is intereſted in their Goods, they appear, the Plantiff declares againſt one of them as principal, and againſt the other as acceſſary, the ſecond deſires to have reſtitution of his Goods, he ſhall not, for alteration of the plaint by and between the Plantiff and Defendant, ſhall not by relation of any matter *ex poſt facto* prejudice the King or a third parties intereſt.

But before this Divorce, *A.* grants the ſervices to I. *S.* a Tenant to B. the Husband, here ariſeth three Queſtions at once.

1. If one bargain to two, and afterwards levies a Fine or Feoffment to one of them, whether it be not ſuch a diſagreement to the former Contract, as by that bargain the other ſhall have all, and

and the Feoffee nothing? and I think the other ſhall have all, and the Feoffee or Conizee nothing.

2. Whether if one bargain for a Mannor, and before Inrollment the Bargainor grants by Fine or Feoffment parcel of the Mannor, to the Vendee, whether this deſtroys not the bargain for all? It doth.

3. There is Husband and wife, and the Husband purchaſes by bargain and ſale to him and his Wife, and their Heirs, and before Inrollment, the Husband takes a Fine, or a Feoffment of all, and then the Deed is inrolled; what ſhall the Wife have? I think ſhe ſhall have nothing. For the firſt, and for all theſe queſtions, we muſt agree upon this ground, which is ſet down in *Hinds Ca. Coke li.* 4. That if a man buy Lands by bargain and ſale, and before Inrollment he accepts of a Fine, or a Feoffment, he is in by the fine, and the Inrollment is of no force.

The next rule is, That if Lands be conveyed to two, and the one will diſagree in Court of Record, or diſclaim in the tenancy, all veſts in the other.

17 *E.* 3. fo. 6. a *Placito* 18. A gift in tail was made to the Husband, and Wife, and they had iſſue, and the Baron died, the Wife diſagreed, all deſcended to the iſſue.

10 *E.* 4. fol. 13. The Tenant infeoffs the Lord, and a ſtranger, the Lord diſagrees, the ſtranger ſhall have all.

20 *E* 4. *Fitz. Nuper obiit* 14. If the Defendant in a *Nuper obiit* diſclaim in the Blood, the other Coparcener ſhall have all by deſcent, and a Mordanceſter of all.

22 *H.*6.44. A Precipe againſt two if one diſclaim, all veſts in the other.

So here, in as much as the uſe paſſed by the contract,

contract, if one of them will waive that contract, and take himſelf to another bargain, then the firſt contract will ſtand good for all to the other, and the Inrollment for all ſhall relate to the uſe of the other, and ſhall be paramount to the fine, and deſtroy the Conveyance by the fine, as it is in *Phams* Caſe. 5 *Eliz.*

2. But then comes in the next queſtion, this fine was but of part of the thing bargained and ſold, and therefore it will not deſtroy the contract for all, but only for part, that is for a Moiety of the ſervices. I take it that this contract being entire, being deſtroyed in part, is void for all, *Qui partem individui facit nihil facit.* I will example it with other Caſes.

34 *H.6.* 21. It is a good plea in an action of debt for rent, that the Leſſor entered before the day of payment, for the contract was entire, and therefore the rent not apportionable.

22 Aſſ. 53. Leaſe for life rendring rent for Land part in Franchiſes, and part in Guildable, in an Aſſiſe brought at Common Law, for the rent, Conizance ſhall not be granted, for the rent is entire, and the Kings Court ſhall be preferred contrary to *Thorp*, as it is in 46 *E.* 3, 8. But if the Land is in queſtion, conizance ſhall be granted for ſo much as lies in Franchiſes.

9 *E.* 4. 1. One is to leaſe a Chamber, and find the Leſſee his board, for 6 *s.* a Week, in an Action of Debt for the Money, *non demiſit cameram* is a good Plea, for deſtroy the contract in part, it is deſtroyed in all, for it is entire.

30 *H.* 8 *Litle Broke.* I ſell my Horſe, and another man's for 20 *l.* to be paid at a day to come, and before the day, the other man recovers his Horſe againſt the Vendee, yet the Vendor ſhall have an action for all the money. So

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So here the Consideration of the money raises the use that's an entire Sum, and if you will have that the Demeasnes shall pass by the contract for the use, and the services, or part of the services shall pass by the grant, what a confusion would that be, and how much of the Consideration went for the one, and what for the other. I might that way maintain my conclusion, that the whole Mannor passes to D.

9 *E.* 4. *Choke* : A Mannor consists of Demeasnes, and Services, sever them and the Mannor is destroyed, and in Sr. *Rol. Heiwards* Case none shall take by fraction of Estates.

3. The third question being, that the Husband purchases Lands by Bargain and Sale to him and his Wife, and before the Deed is inrolled, the Husband takes a Fine or a Feoffment of the Land, to him and his heirs, and then the Deed is inrolled, what shall the Wife have? and I say (as I said) she shall have nothing.

3 *H.* 7. 9. It is plain, that if Lands be conveyed to a Feme Covert, if her Husband disagree, the Feofment made to her is made void, and it shall return to the Feoffer. But if a Feofment be made to *I. S.* and a Feme Covert, and her Husband disagrees, all vests in *I. S.*

Ratland's Case, li. 5. *Cook* is, that the Husband by Indenture limits Lands to the use of his Wife, but before the fine levyed, by other Indentures he limited the same to other uses : so in that case before the assurance is perfected, the Husband by whose means, and bargain making, this use was to rise to the Wife, before this Assurance finished, makes a new bargain for himself, and the Wife if he disagree can take nothing.

Kenus

Kenn's C. Cook. lib. 7. It is the Husband hath the power to contract for the uſe, although it be of the Wives Lands.

4. The next matter that I intend a queſtion upon the Statute of Inrollments, is (ſuppoſing this Land is held in *Capite*) Lands held in *Capite* are bargained and ſold to a man, and before the deed is inrolled, the Bargainee dies, his heir within age, whether here be ſuch a dying ſeiſed, and a deſcent, as his Son ſhall be in ward? and I think it is.

There be divers Caſes, where the heir ſhall be in ward, and yet the Anceſtour dyed not ſeiſed.

48 *E.* 3. 8. If there be Lord and Tenant, and the Tenant is diſſeiſed and dies, his heirs within age, the Lord may ſeiſe, *&c.*

20 *H.* 6. Tenant in tail aliens, and dies, his heir within age, his heir ſhall be in Ward to the Donor.

33 *H.* 6. 5. Tenant for life, the remainder in fee, he in remainder dies, his heir ſhall not be in ward for the remainder, but if the Tenant for life die, then by matter *ex poſt facto* he ſhall be.

11 *H.* 4. 61. By *Hank.* and *Norton.* If the heir recover in a writ of *ayel ou Cocinage* he ſhall be in Ward.

If the Father loſe by error, or falſe verdict, If the Son reverſe the Judgment by error or attaint, he ſhall be in ward: If the Father recover and dies before entry, or execution, and the Son ſue execution, he ſhall be in guard.

Points

Points upon the Statute.

Swinburn *Fol.* 175. *I will that my villain be manumitted when my Son comes to age, my Son dies before the age, the villain shall be at Liberty, when the Son would have been of age.*

D. Enters, and manumits a villain: The Question is, a man hath a Mannor to which be villains regardant, he becomes a Bankrupt, manumits the the villain, Commission is agarded, if the Commissioners may sell the villain? and I have concluded they cannot, For the villain being once at liberty, in this case is infranchised for ever.

I grant that in divers cases a villain may be infranchised *pro tempore*, and yet be a villain again.

13 *E.* 4. 2. As if Tenant in tail will enfeof his villain of the Mannor, the issue shall have a Formedon and reduce both the Mannor, and the villain.

33 *H.* 6. 13. Enfranchment by Tenant for years, or for life, is good but for their time.

And it is much controverted, whether if a nieff marry a Freeman, she be not for ever enfranchised.

Old *Nat. Brevi. fol.* 6. If her Husband die she shall be a nieff again.

33 E. 3. *Statham Vil.* She shall be neiff again even to her own Son, when her Lord and Husband dies: But as the Law saith, there is nothing more respected than life, and liberty, So I am of opinion, and I have authority for it, that if she be once married, either to her Lord, or another Freeman, she is at liberty for ever.

31 *E.* 1. *Fitz. vill.* 46. It is first questioned, and some there are of opinion, that after the death of her Husband

Husband, ſhe ſhall be in bondage again, *quod Burton negavit*, but if ſhe marry the Lord, then by all ſhe is infranchiſed for ever.

Britton fol. 78. She is infranchiſed for ever.

Natura brevi. B. 78. *G.* I will conclude with the firſt authority; by *Fitzherbert Brittons* opinion ſeems reaſonable, if ſhe divorce not her ſelf, or acknowledge not her ſelf in Court of Record, in favour of Liberty, and becauſe ſhe and her Husband are but one perſon in Law, and of the ſame condition with him.

There be divers things favoured in Law, as Womens dowers, the King, Lords, Holy Church, ancient Records, Deviſes, Infants, Purchaſors and poſſeſſions; But next life, Liberty of all things is moſt favoured.

18 *E.* 4. 6. No amercement lies againſt the Sheriffs return, yet in a writ of *Libertate probanda*, if the Sheriff returns, that he hath no writ of *nativo habendo* depending before him, one may offer the contrary *in favorem libertatis. Quia propenſiores eſſe debemus ad liberandum, quam ad obligandum.*

It hath been made a Queſtion, upon the Statute 39 *Eliz.* that appoints the Lands, Tenements, and Hereditaments of Accomptants to be ſold, which they had at the time when they fell into *Arearages*, whether if the Accomptant ſhall manumit a villain, he ſhall be nevertheleſs ſold, and the beſt opinion of him that read upon the Statute in this place was, that his liberty could not be revoked, for here were neither Lands, Tenements, nor Hereditaments; and ſo here.

27 *Aſſizar.* Enfranchiſement for a time by act in Law, but if the Lord will manumit his villain for

a day, by his voluntary grant, he is at liberty for ever.

The Tenant dies without heir: the Queſtion is this, A Lord is a Bankrupt, and dies, a Tenancy eſcheats, if the Seigniory, or the Tenancy ſhall be ſold?

I take it, as I have concluded, the Tenancy, that is the Land ſhall be ſold, firſt ſee the words of the ſtatute *Primo Jacobi*, *The Commiſſioners may proceed in the execution of the Commiſſion, in ſuch ſort as they might have done, if the party Offender were alive*; this makes an end of the queſtion, for if he were alive, and the Tenancy eſcheated, the Land ſhould be ſold. And therefore I ſhall not need to put you Caſes at Common Law, where the Tenancy eſcheating ſhall be bound to that, where the Land was tyed.

6 *H.* 4. 1. Tenant in tail diſcontinues, and dies, and leaves a Seigniory to deſcend to the iſſue in tail, a Tenancy eſcheats, in a Formedon by the iſſue, the Tenancy ſhall be Aſſets.

14 *H.* 8 4. *Fitzherbert*, *ceſtui que uſe* of a Seigniory, a Tenancy eſcheats, the Feoffee ſhall hold the Land to the uſe of the Feoffer.

46 *E.* 3. 4. Tenant in tail of a Seigniorty, a Tenancy eſcheats, Tenant in tail diſcontinues, and dies without iſſue, the Donor ſhall have a Formedon of the Land.

3. A Commiſſion is awarded, *D.* is *felo de ſe*, the Queſtion, a Commiſſion is awarded, and the Bankrupt becomes *felo de ſe*, Office is found, if the Almoner ſhall have his goods, or the Commiſſioners may ſell them? for the Lord Almoner hath all the goods, and chattels of Felons of themſelves, and all Deodands, as appears by our

our Books, and his Charter which I have ſeen.

6 *E.* 6. *Dier fol.* 77. The King leaſes *Richmond* fee with all Deodands, and after grants to the Almoner, the term expires, the grant to the Almoner void, becauſe the other leaſe was not recited.

2. *Mar. Dier* fol. 107. The King grants to the Archbiſhop of *Canter.* Deodands in *D.* and to the Almoner all in general, *Hales* is *felo de ſe.*

Plow. Dame Hales, the Biſhop is attainted, the King ſhall have the Leaſe.

It is true (as it appears in *Dame Hales* caſe) That when two titles come together, that is the Kings and a ſubjects, the Kings ſhall be preferrd, As if a villain be a fool natural, the King, not the Lord ſhall have him.

If a villain be *felo de ſe*, the King, not the Lord ſhall have his goods. Then a Bankrupt is *felo de ſe*, ſhall the King, or the Creditors have his goods? I think the Creditors: For if the Bankrupt in life had no authority to diſpoſe them, (as it is in *Tibnahums Ca.*) much leſs ſhall he diſpoſe of them by his death. And admit the Almoners Patent were before the Statute of *primo* of the King, yet both the King, and the Almoner, by Act of Parliament have given away their title to the Creditors.

4. I have already argued, that the heir of the Bankrupt is in by deſcent, now the Caſe is, he is within age, and an office is found, and that the Land is held of the King *in capite*, the Queſtion, (and the hardeſt queſtion in my Caſe,) is, whether after an office of all this matter found, the Commiſſioners may ſell? And I think they may.

For this office, finding the whole matter, notwithſtanding a tenure *in capite*, a dying ſeiſed of the Tenant, and the minority of an heir is found, yet

nothing veſts in the King: For when an Act of Parliament ſhall appoint the Land to go another way, and the courſe taken according to the Statute is found in the Office, the King his Officers in the Law ſhall conſider of all the whole matter in *Concreto*, and not in *abſtracto*, and ſhall challenge nothing for the King, which belongs not to him, as is ſeen by a Deviſe made by Tenant *in capite*, according to the Statute of 32 *H.* 8. of *Wills.*

5. The Commiſſioners impriſon the Bankrupt in his own Houſe: Two queſtions, firſt whether the Commiſſioners may impriſon him by the Statute of 13. which gives them authority to diſpoſe of his body, as they ſhall ſee good in their diſcretions, when as the Statute of *primo* appoints an impriſonment upon a ſpecial cauſe of refuſal, as if there were no Law general to impriſon him, in divers caſes *expreſſa nocent Vide*, my Moote Book?

I think they may. It is true that *Leges poſteriores priores contrarias abrogant*, but this is not a contrary Law, but a ſtrengthning, and a confirmation of the former Law in a particular, nor doth it revoke the former no otherwiſe than that, where by the Statute of 27 *H.* 8. Leaſes ſhall be under the Dutchy Seal. This doth not take away the Authority of the Great Seal, but that Grants may paſs under the Great Seal ſince the Statute: And for ſureneſs now a days, they put many times both Seals to them.

2. Queſtion is, whether this Impriſonment in his own Houſe be ſuch a Dealing in the Commiſſion, by the Commiſſioners as is intended by the Statute of *primo*. That his dying afterwards ſhall not alter the Caſe, For if it be a lawful Impriſonment, then here is a Dealing, if not contrary, for *Ea poſſimus quæ*

quæ jure poſſimus, for as it is ſaid by *Herle* for a *Maxime*, that all Leets, Hundreds, and in 2 *E.* 3. all Ports, and Cities are the Kings, and the Lords have but the uſe and profits of them under the King; ſo it is ſaid, all *Gaoles* are the Kings Priſons, and none others of the Land, for life, and member belongs to him only, and the Lords have only the regard; and that is the reaſon, that in all Corporations in their Charters they always have a Grant, and liberty to have a Priſon.

Auditors by the Statute of *W.* 2. *cap.* 11. may ſend the Baily, found in *Arrearages* to Priſon; by the Book, it muſt be to the next Gaol, though it be in another County, otherwiſe an Action of falſe Imprisonment lies. So our Commiſſioners muſt be careful to purſue their Commiſſion; but becauſe the Statute ſaith, they may diſpoſe of his body at their diſcretions, therefore to ſtay him in his own Houſe, or in one of theirs, till he be further examined, I think it not amiſs, although I have heard, that ſome Commiſſioners have been blamed for not ſending him to the Gaol.

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1. *A.* makes a Feoffment in Fee to *B.* by livery, within the view, *B.* Covenants, with *C.* to ſtand ſeiſed to the uſe of *D.* his Son, *A.* enters and makes a Feoffment to *B.* *D.* enters, and makes a Leaſe for years to *E.* a Merchant, upon condition to have in Fee, *E.* is a Bankrupt, *C.* diſagrees to the Contract, *E.* becomes a Recuſant Convict, and hath not Lands ſufficient to pay 20 *l.* a Month, the Commiſſioners ſell the Land, the King ſeizes the Term, the condition is performed.

The Vendee ſhall have the fee-ſimple.

Points.

1. IF livery within the view may be countermanded by livery in fact?

2. If the Feoffee, to whom livery is made within view before entry, Covenants to ſtand ſeized to another uſe, and after enters, if the Covenant good, that is, if by his entry he by relation is in from the time of the Livery?

3. If a covenants with *B.* to ſtand ſeiſed to the uſe of *C.* and *C.* enters, and B. diſagrees to the Covenant, if the Land ſhall revert to *A.*?

4. If a Bankrupt hath a Leaſe for years upon condition to have fee, if the Commiſſioners may ſell the Land with the poſſibility?

5. A Bankrupt hath a Term, and is a Recuſant convict, if the King or the Creditors ſhall have the Term?

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2. The King, Lord, Meſn, and Tenant of Borough *Engliſh* Land, the Tenant by Licenſe of the King to create Tenures, deviſes the Land to *A.* in fee, to hold of his Heirs by Knights ſervice, *A.* is attainted of Felony, and deviſes the Land to his eldeſt Son a Merchant Bankrupt, the Meſn enters, the younger Son reverſes the Attainder, the eldeſt waives the Deviſe.

The Commiſſioners may ſell all the Land

Points.

1. IF the King may grant to the Tenant of another to create new Tenures in prejudice of the Meſn as to Eſcheats? 2. I

2. If Tenure in Borough *English*, which is always Soccage, may be altered into Tenure in Knights ſervice?

3. If it may be altered as to the Cuſtom to deſcend to the youngeſt?

4. If it may be altered as to the Tenure, but not as to the Cuſtom, if the youngeſt Son ſhall be in Ward?

5. Upon the Statute of Wills 32 *H.* 8. Lord and Tenant, the Tenant is attainted, and Deviſes his Land, and dies, the Heir reverſes the Attainder before entry of the Lord, if the Deviſe is good?

6. One Deviſes Land to a Merchant, and he becomes a Bankrupt, and waives the Deviſe, if the Commiſſioners may ſell the Land?

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3. A Merchant makes a Leaſe for Life to an Infant, the remainder to the King for Life of *A. B.* enters, and dies ſeiſed, the Deed is Inrolled, *A.* dies, the Infant enters, the Leſſor, in conſideration of marriage, covenants to ſtand ſeiſed to the uſe of himſelf and his Wife, and their Heirs, the Infant at full age makes a Feoffment, the Heir of the Diſſeiſor enters, the Leſſor is a Bankrupt, the Commiſſioners ſell, Leſſor dies, the Feme waives.

This is a good Sale of all the Land in Poſſeſſion, and Reverſion.

Points.

1. WHether the Inrollment doth not relate to avoid the deſcent?

2. Whether the Entry of the Infant reduce the reverſion?

 3. Whether

3. Whether the Sale not being good againſt the Wife, is made good by her waiver?

Vide ante the Principal Caſe.

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5. One grants a Rent Charge to a Phyſician, and his Heirs, *pro Conſilio impenſo & impendendo*, the Phyſician is his own Apothecary, and becomes *non ſolvent* for Drugs and Simples, which he uſed in his Art, a Commiſſion is awarded, the Phyſician keeps his Houſe for fear of Arreſts, the Phyſician brings a Writ of Annuity, and recovers by erroneous Judgement, the Commiſſioners ſell the Rent, the Recoveree reverſeth the Judgment, the Phyſician dies.

This Sale of the Commiſſioners was good for this Rent, but not to take effect during the Life of the Phyſician.

Points.

1. IF an Annuity in Fee be granted *pro Conſilio* may be ſold?

2. Whether he have any Election after he is Bankrupt?

3. Whether the bringing of this Annuity which is reverſed, be an Election?

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6. One makes a Gift in Tail rendring Rent, and dies, the Rent is arrear, a Diſſeiſor enters, and levies a Fine, five years paſt, the Heir of the Donor is a Bankrupt.

The Commiſſioners ſhall ſell the Rent, and the Arrearages.

Three

Three Points upon the Statute.

1. UPon the Statute of Fines, the Second and Third upon the Statutes of Limitations, and Bankrupts.

1. Upon the Statute of Fines, that is, if Fines of the Land ſhall be a Bar for the Rent ?

2. And 3. Upon the Statute of Limitations : If Commiſſioners may ſell when the Party was concluded by the Statute of Limitations : *6 Jacobi Banco Regis*, Executors notwithſtanding no Seiſin in their Teſtator by fifty years, ſhall deſtrain by the the Statute of 32 *H.* 8.

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7. *A.* and *B.* Tenants in Common of the Mannor of *D.* and Jointenants of the Mannor of *S.* They by Deed Poll bargain and ſell Common of Paſture, within the Mannors for a Cow to *C.* and his Wife, and to the Heirs of their two bodies begotten, *C.* the Husband grants the Common to *E.* in Fee, the Wife dies without iſſue, *E.* is a Bankrupt.

E. had Common for a Cow, but it is neither Land, Tenement, nor Hereditament, which may be ſold by the Commiſſioners.

8. The King grants to *I. S.* that he only for his life ſhall have the Importation of Steel, he aſſigns his Patent to *I. N.* a Merchant, *I. N.* becomes *non ſolvent*, and after acknowledges himſelf to be a Villain regardent to the Honour of *Hampton-Court*, a Commiſſion is awarded.

I. N.

I. N. *Is a Bankrupt, and the Commiſſioners may ſell all his Lands and Goods, but not the* Monopoly.

9. *A.* and *B.* Jointenants Covenant for natural affection to ſtand ſeiſed to the uſe of *C.* for life, *C.* enters, and *B.* dies, *C.* dies, the Heir of *B.* makes a Gift in Mortmain, the Lord before entry bargains and ſells the Seigniory to *I. S.* who enters, and makes a Gift in Tail, the remainder to *I. N.* a Merchant, Tenant in Tail is attainted of Treaſon, and ſuffers a common Recovery, Office is found, *I. N.* becomes a Bankrupt, Tenant in tail dies without iſſue, *I. N.* waives the remainder.

The Commiſſioners may ſell the Moiety of this remainder.

10. One grants an Advowſon to a Feme Covert ſole Merchant, the Church becomes void, the Husband in conſideration that *I. S.* doth enter into Bond to preach twice a Week, preſents him to the Benefice, the Feme becomes a Bankrupt, the Husband dies, the Feme waives the Grant, the Commiſſioners within the ſix months ſell the Preſentation, and the Advowſon.

This is a good Sale of the Advowſon, but the King ſhall preſent.

Five

5. *Diviſion.*

What Copyhold Lands of a Bankrupt the Commiſſioners may ſell, and in what caſe Compoſition ſhall be made with the Lord, and in what not.

1. A Tenant by Copy of *Wh.* Acre ſurrenders to the uſe of *B.* for years, upon condition that he will not do waſte, and after he ſurrenders the reverſion into the hands of two Tenants to the uſe of C. a Merchant in Fee, the Lord makes a Feoffment of the Acre to *D.* C. departs the Realm, and after is *non ſolvent*, a Privy-Seal is awarded againſt him, the Tenants preſent the ſurrender to the Court of the Lord; C. will not return, the Commiſſioners ſell the Reverſion to *E.* *B.* makes waſte, *E.* tenders Compoſition to *D.* who refuſeth it, and *E.* enters for the Condition broken.

The Sale is good, and the entry of E. *congeable, but no Compoſition is due.*

Points in the Caſe at Common Law.

1. TEnant by Copy ſurrenders into the hands of two Tenants, and the Lord ſeparates the Freehold from the Mannor, if the ſurrender is void?

2. Tenant by Copy, ſurrenders to one for years, and after to the uſe of another in Fee, if good without Attornment?

3. If the Tenants are bound to Preſent the ſurrender at the Lords Court, after he had ſeparated the

the free hold from the Mannor, That is, whether the Preſentment ſhall not intereſt the party to whoſe uſe, *&c.* by relation from the ſurrender?

4. If Tenant by Copy ſurrender to the uſe of one for years upon condition, and after he ſurrenders the reverſion to the uſe of another in fee, and after the condition is broken, if the Grantee in reverſion ſhall enter for the forfeiture by the Statute of 32 *H.* 8. *Cap.* 34.

5. If a Copy-holder Leſſee for years by ſurrender commits waſte, if this is a forfeiture to the Lord, or onely to him in reverſion, or of the reverſion?

Points upon the Statute.

1. IF a Merchant who departs by licenſe, and upon a privy Seal will not return, but is *non ſolvent*, ſhall be a Bankrupt?

2. One had onely the free-hold of a ſole Copy-holder, if ſuch Copy-hold may be transferred by ſale of the Commiſſioners?

3. A Copy-hold is ſurrendred to the uſe of a Husband, who will not be admitted, if the Commiſſioners can ſell?

4. Whether one fine, 2. fines, or no fine be due to the Lord?

5. Admitting a fine were due, and the Lord after tender refuſeth it, what remedy the Vendee hath for the Land, or the Lord for the fine?

1. When there is a Lord of a Mannor, and Copy-holder of Inheritance ſurrenders into two Tenants hands, and then the Lord makes a Feofment of the Copy-hold, I take it that this ſeverance of the Free-

Free hold, and of the Copy-hold from the Mannor ſhall not deſtroy the ſurrender, For when the Copy-holder hath once ſurrendred, he hath diſmiſſed himſelf of all his intereſt, and the right is in the party to whoſe uſe the ſurrender was made.

Bunting Ca. *Coke. li.* 4. The death of the ſurrenderer, the death of the Tenants, nor the death of the party to whoſe uſe the ſurrender was made, ſhall not alter the Caſe. But the party to whoſe uſe ſuch a ſurrender is made, hath ſuch an intereſt as ſhall deſcend to his heir, for his heir ſhall be admitted, and by the ſame reaſon his intereſt ſhall remain, notwithſtanding the Lord ſell the Free hold (as it is ſaid in *Morrels* caſe,) the cuſtom hath ſo eſtabliſhed, and fixt the eſtate of the Copy-holders that the Lords ſevering it from the Mannor, cannot alter it.

It was adjudged, that the cuſtome of a Mannor being, that if Tenant for life by Copy die, his Wife ſhall have her Widdowes eſtate, the Lord diſſolved his Mannor, the Copy holders Wife died, he took a new Wife, and then he died, the Second Wife had her Widdowes eſtate, and yet there was no Court, whether ſhe could come to have the death of her Husband found and preſented, and where ſhe might be admitted? *&c.*

But admit that the Surrender had been made into the Lords hands, out of the Court, as by *Melwich* his Caſe it may, or admit it had been made in Court, and the party to whoſe uſe it was made, had tendered the Lord his due fine, and the Lord would demand more, and ſo defer the admittance: In theſe Caſes, the Law is plain, that the party may enter, and no Action lies by the Lord againſt him. And what if the Lord diſſolve the Mannor, ſhall that alter

alter the caſe? No, no more than if a Copy-holder of inheritance die, and the Lord ſevers the Freehold from the Copy before the Heir be admitted, this ſhall not deſtroy the Heirs eſtate, but he may lawfully enter, and hold it for ever without admittance.

2. But here notwithſtanding this ſeverance of the Free-hold from the Mannor, the two Tenants preſent the Surrender the next Court held by the Lord for the Mannor. The Queſtion is firſt, whether the Tenants were bound to do it or no? And the next, what is wrought by it? And I take it they ought to preſent it; For notwithſtanding the Copy-hold be ſevered from the Mannor, yet they are not ſevered, they be Tenants ſtill, and they muſt do their duties, and the rather, becauſe it is not altogether ſevered, for Tenant for years of the Copy-hold, remaines ſtill Tenant to the Lord, and his rents and duties are to be done to the firſt Lord, and not to the Copy-holder in reverſion: But to what uſe is this preſentment of theirs? I take it to this uſe. It ſhall have relation to the Surrender and intereſt of the party, to whoſe uſe it was made from the time of the Surrender. Like as an Office found 10. years after an eſcheat, will intitle the King to all the mean profits from the death of the party; Or as a Deed acknowledged to be Inrolled, ſhall be Inrolled notwithſtanding the death of any of the parties, and ſhall have relation from the date of the Deed, to intitle the Bargainee to the profits: Or as a Legacy is given by Will, cannot be ſued for till the Will be proved, and then the Probate makes the Legacy due by relation, ever ſince the death of the Teſtator; Even ſo the Preſentment hath relation to intitle the party to whoſe uſe the Surrender was made,

made, from the time of the Surrender; And this appears plainly by *Rowſwels* Caſe in *Chancery*, Feme Tenant for life of a Copy-hold, the Lord grants the Reverſion to three, the Baron Surrenders to one of them, who firſt dies, there the Lord would have kept the Land as occupant, during the Husbands life. 9 *Eliz. Dyer.* 267.

But it was decreed, that if the Husband and Wife would ſurrender to the Surviving Leſſees in reverſion, the Lord muſt admit them, or elſe avoid the poſſeſſion; So if the Lord will not admit the party to whoſe uſe, the party ſhall have the Lands; if a man ſurrender to the uſe of his laſt Will and Teſtament, the Lord ſhall not have the Land but the Tenant during his life.

3. But before I go any further, let us conſider of this Leaſe, it is by a Surrender upon Condition, and he in reverſion ſurrenders to anothers uſe, and the Condition is broken: My Queſtion is, whether he in reverſion ſhall enter for the Condition? by the Common Law he cannot, then may he enter by the Statute of 32 *H.* 8. *Cap.* 34. of Conditions, there be divers Statutes which reach Copy-holds, though they be not named.

Heydons Caſe, *lib.* 3. Copy-holders are Leſſees within the Statute, 32 *H.* 8. of Monaſteries.

The Statute of *Cui in vita, Receipt, quod ei defortiat, Coke li.* 4. *Kite. per Wray,* Copy-hold eſtate is within the Statute of *Champertie,* and Maintenance, 32 *H.* 8. *Cap.* 9. *Dean* and *Chapter* of *Worceſters* Caſe, *Coke li.* 6. Copy hold is within the Statute of 13. *Eli.* of Leaſes by ſpiritual perſons, Lands uſually let, *&c.*

Lillingſtones Caſe adjudged 27. *Eliz.* That if the Lord inſeoff the Copy-holder to anothers uſe, that the Copy-hold is ſaved by the Proviſo in the Statute of 27. *H.* 8.

Margaret

Margaret Podgers Caſe. A Copy-holder is bound by Fine, and 5. years.

The general rule is layed down in *Heydons* Caſe, That all Statutes that may be for the good of the Copy-holder ſhall extend to them, therefore I am of opinion, that ſuch a Grantee ſhall enter for non-payment of rent, or for doing of waſte, as the words of the Statute are; For it is for the good of the Copy-holders that their Farmers be bound to pay their Rents & keep their Tenements in repair. I ſhould make ſmall queſtion of this if the Leaſe were made by licenſe, for then it is a plain leaſe at Common Law, and an *Ejectione firme* will lie: But here the Leſſee comes in by the Lords admittance, but that is anſwered by my Lord *Cook*, when he is once admitted, he is in immediately from the Surrender and in the *Per.*

4. But this Condition is, for waſte, and it is broken, whether is there a forfeiture to him in reverſion, or a forfeiture to the Lord of the eſtate in fee ſimple? It is to the Leſſor, not to the Lord, wherein I fall again upon the difference, when it is by Licenſe, and when by Surrender, for I take him to be as if he had a particular eſtate with a remainder over. In *Podgers Caſe fo.* 107. *Si cop. pour vie ſit ſemble al caſe del Duke of* Norff.

Points upon the Statute.

A Merchant being a ſufficient man departs the Realm, and beyond the Seas becomes *non ſolvent*, and ſo refuſes to return, although he be ſerved with a privy Seal to return: Here be two Queſtions,

ſtions, Firſt whether he be a Bankrupt for not returning; For he is not within the Compaſs of the Statute of departing the *Realm*. The next Queſtion is, (admitting him to be a Bankrupt:) Whether the King ſhall have his Goods, as the goods of a Fugitive, or elſe whether they ſhall go to ſatisfy the Creditors? For the firſt, I think, he is a Bankrupt, and although he be not within the compaſs of theſe words, (depart the Realm) yet it is plain, he is within theſe words (abſents himſelf) for although his departure was no offence either to the King or his Creditors (For Merchants both by the Common Law, and notwithſtanding the Statutes of 5 *R.* 2. *Cap.* 2. or the Statutes of 13 *Eliz.*) might depart the Realm without licenſe, except the King (as it is in *Natura Brevium* fol. 85. had made proclamation to the Contrary.) Yet the King not only by the Statute but by the Common Law, as he may forbid a man to depart, ſo he may ſend for him at his pleaſure to return; And that is proved by the expreſs Book of 2 & 3 *Phil.* and *Mary. Dyer*, fol. 128. Where it is ſaid, *That if he be commanded to return, either by the privy Seal, or the great Seal, and refuſe, his Lands and his Chattels ſhall be ſieſed into the Kings hands*; and for that a Preſident was found in the Exchequer, where in *Anno* 19 *E.* 2. It was *William de Brittains* caſe, although it is true (as I ſaid) the firſt departure is no offence according to the Book of 13 *Eliz.* D. *fol.* 296. But then admitting he is a Bankrupt, and admitting that by his refuſal to return he hath forfeited all his Goods and Lands to the King, The Queſtion is, whether the King, or the Creditors ſhall be preferred? And I take it the (Creditors ſhall be preferred) Yet lle agree the rule is, that when a title falls to the

King and a Common perſon both at once, the King ſhall be preferred.

Dame Hales, Villain and Ideot, Priority and Poſteriority. 5 E. 3.

But I rely upon a Caſe, which was ruled upon a Trial by my Lord *Cok.* 12. *Jac. int. Newman and Martin, ou Martin fuit adjudge* Bankrupt becauſe he was beyond the Seas, *&c.*

2. Points upon the Statute. One hath the freehold and another hath the Copy-hold of one onely acre ſevered from the Mannor, this is plain, as it is in my Lord *Cokes* 4. reports in Caſe. This Copy-hold by no means can be transferred from one to another. But now our queſtion is, Whether this Copy may be ſold by Commiſſioners? I ſay, *Parliamentum poteſt omnia*, By Act of Parliament it may be ſold, And here the very words of the Parliament are, *That the Commiſſioners may ſell his Copy-hold eſtate.*

The Law was taken before *Corbets* caſe was firſt argued, That it was impoſſible to cut off perpetuities, yet there were divers before, that were cut off by Act of Parliament, and they all that argued for the perpetuites agreed, that by Act of Parliament it might be done. By the Common Law a thing in action cannot be transferred, as a debt upon an Obligation; Yet by the Statute of Bankrupt, *Jacobi primo*, we ſee it is done every day.

But it will be objected, that the Statute goes on and ſaith, *That the Vendee ſhall compound with the Lord for the Fine, and be admitted:* Now if there can be no admittance, then no ſale, and it ſhall be intended ſuch Copy-hold whereof admittance may be. And in Dr. *Bonhams* caſe, divers caſes are put where divers Acts of Parliament are avoid,

void and divers others conſtrued directly contrary to the words. But out of that Caſe I will prove this to be good; for firſt this Act ſaith, *The Commiſſioners may ſell*, then there is their Authority; the Vendee ſhall compound, that is a ſecond action which muſt be done, if it may be done. *Hillary* 38*Eliz.* A Grant was made to the Mayor and Commonalty of *London*, that the Mayor ſhould have the ſearch, *&c.* of all Handicrafts, and ſhould puniſh them, but granted no Court where the ſame ſhould be puniſhed; this was good for to ſearch, and to diſcover; but void for him to puniſh, but it muſt be puniſhed, as it may be otherwiſe.

The Statute of 5 *Eliz. cap.* 13. of Highways ſaith, *Who comes not at the common days ſhall forfeit, and orders, that the offence ſhall be preſented at the next Seſſions*, &c. *Upon pain of Forty Shillings*; no Certificate is made, yet the offence ſhall be puniſhed.

3. But now we are upon the point of Fines, a queſtion riſes in this Caſe, whether two Fines, or but one, or no Fine be due to the Lord; and I think a Fine is due. Plainly two Fines ſhould have been paid, one to the Lord of the Mannor upon the ſurrender of *A.* to *C.* and another upon the ſale by the Commiſſioners, as it is in the *4th. Report fo.* 22. the heir ſurrenders before admittance, the Lord ſhall have two Fines. But in *Hubbard* and *Hammond*'s Caſe, it is ſaid no Fine is due to the Lord before admittance; for the admittance is the cauſe of the Fine; and if after admittance it be denied, it is a forfeiture. But I take it in this caſe, the Lord ſhall have no Fines; for the Statute muſt have a reaſonable conſtruction; and indeed for all parties according to equity; and in all

Statutes where the ordering of things is referred to mens diſcretions, equity and good Conſcience ought to reſpected; and therefore it is ſaid, 3 *E.* 3. An accompt ought to be amended by the Auditors, according to equity and good faith: But what remedy hath the Lord for it?

4. But here a Fine is tendered, and refuſed; now the queſtion is double, 1. What remedy generally? 2. Whether it be loſt for ever or not? For the firſt, if it had been in a caſe that the Lord could have admitted him, he ſhould have had the ordinary remedy, as all Lords have for their Fines, that is upon preſentment of a Surrender, or of the death of a Tenant, or of ſale by Commiſſioners, the order is to call the Party that ſhould be admitted, and if he come not in time, to ſeize his Land: But here can be no Calling, for here's no Court: Surely, I think as the Vendee may enter without admittance, ſo the Lord may enter again upon him, and ſeize the Land till his Fines be paid; but theſe Fines have been tendred, and refuſed.

We ſee that tender and refuſal in many caſes is peremptory, as *Littleton* in caſe of Mortgage.

27 *E.* 3. 88. *Un diſtr. pur dam. feſant, & ſi avoyde*, the Tenant pleaded, that before the taking, at the taking, and after the taking, he tendered ſufficient amends, and the Avowant refuſed, he hath loſt his damages, and ſhall pay damages, *&c.*

22 *Hen.* 6. 44. A Man is bound in an Obligation to ſtand to the award of *J. S.* he awards that the one ſhall releaſe the other, who tenders a releaſe, the other refuſes, in Action of Debt, *ſur le ob.* tender and refuſal is a good plea, *ſans dira uncor Priſt.*

But yet in the ſame caſe it is put, That if Money had been awarded, and tendered, and refuſed, the

the Bond had been ſaved, but the duty had remained.

45 *E.* 3. 9. The Lord deſtrains, the Tenant tenders, the Lord refuſes, yet the Rent is not loſt, but at another time the Lord may diſtrain.

Brian, If the Tenant tender his homage, and the Lord refuſe, he cannot deſtrain, but upon a requeſt, if the Tenant refuſe, he may deſtrain. So here, the Tenant tenders his Fine, the Lord refuſes, I take it the Fine is not loſt; but after a new requeſt the Lord may ſeize.

5. The laſt point upon my Statute is, a Bankrupt purchaſes a Copyhold, and the Tenant ſurrenders into two Tenants hands to the uſe of the Bankrupt, and now he will not be admitted: whether the Commiſſioners ſhall ſell the Copyhold? And I think they ſhall by the very words of the Statute, which are, 'That the Commiſſioners ſhall ſell all 'Lands which the Bankrupt ſhall purchaſe with any 'other Perſons of truſt, or to his ſecret uſe; If then they may ſell Lands wherein he hath ſecret uſe, much more, Lands wherein he hath an expreſs uſe: And in this Caſe, if his negligence to pray to be admitted, or his abſence beyond Sea ſhall hinder the preſent Sale, and he die, his heir may be admitted after his deceaſe: And then a greater Queſtion will riſe, Whether the Land may be ſold, or not?

2. A Copyholder of Inheritance, where the Cuſtom is, that the Wife ſhall be indowed, ſurrenders into the hands of two Tenants to the uſe of the Mayor and Commonalty of *D.* in Fee, and dies; the Wife marries with *I. S.* a Merchant, the Mayor and Commonalty are admitted, the Heir of the Copyholder enters: *I. S.* and his Wife affirm a Plaint in the Lords Court, in nature of a

Writ of Dower, and recover againſt the Heir, the Mayor and Commonalty enter, *I. S.* and his Wife ſue a Precept, in nature of a *Scire facias*, againſt the Mayor and Commonalty, for to have a a Writ *De Dote aſſignanda*, and damages: *I. S.* becomes a Bankrupt, the Commiſſioners ſell the Copyhold, and aſſign the damages which ſhall be recovered; the Vendee compounds with the Lord.

This is a good ſale for a third part of the Copyhold, during the Coverture, and a good Compoſition; but the Aſſignment of the Damages is void.

3. *A.* Is Tenant in Tail of a Mannor, where the Cuſtom is, that the Wife of a Copyholder ſhall have a Widow's Eſtate: *A.* grants *white Acre* to *B.* by *Copy* for life, and after he makes a Leaſe of *white Acre* for life to *F.* the Wife of *B.* dies: *A.* makes a Feoffment of the Mannor to *G.* and all the Tenants attorn: *A.* dies, *B.* takes a ſecond Wife, and dies, the Iſſue in Tail enters into the Mannor; the ſecond Wife takes *M.* to Husband, who becomes a Bankrupt; the Commiſſioners ſell *white Acre*, the Vendee compounds with the Iſſue in Tail, and enters, *F.* dies.

The Sale is good during Coverture, and the Compoſition is good.

4. Baron and Feme have iſſue, *A.* a Daughter, the Baron dies, the Mannor of *Sale* is given to the Feme for life, the remainder to the Heirs of the Baron and Feme: A Copyholder ſurrenders to the uſe of himſelf in Tail; the remainder to *A.* in Fee, the Feme takes

takes a ſecond Husband, and hath iſſue *B.* another Daughter and dies, *A.* enters, the Copyholder ſuffers a cuſtomary recovery, and dies without iſſue; his Heir being a Merchant, and Bankrupt: *B.* enters, the Commiſſioners ſell the Copyhold: the Vendee compounds with *B.*

The Sale is good, but the Compoſition is good but for a fourth part.

1. *A.* Shall have a Moiety as Heir of the Husband, and the Moiety of the other Moiety as Heir of the Feme, and *B.* the reſidue.

2. If Tenant by Copy, by Recovery may bar the Remainder?

3. If when the Lord is in Remainder, it be not ſo annexed to the Fee, that it cannot be pulled out by a Recovery?

5. The Mannor of *D.* is holden of the Mannor of *S.* by Copy, and *I. S.* holds a Houſe, and Land Common for ten Cows of the Mannor of *D.* by Copy in Fee: The Lord of *D.* ſurrenders his Mannor to the uſe of *I. S.* for life, who is admitted accordingly: *I. S.* grants the Common by Copy to *A.* a Merchant, *A.* is admitted, and is a Bankrupt; *I. S.* dies, the Lord of *D.* enters, the Commiſſioners ſell the Common, the Vendee compounds with the Executors of *I. S.*

The Common cannot be ſold, and if it might the Compoſition ſhall be with the Lord of D.

6. Tenant by Copy is diſſeiſed, and the Diſſeiſor is admitted Tenant by the Lord; the Lord

bargains and ſells the Mannor to *I. S.* in Fee, by Deed inroll'd, the Diſſeiſee becomes a Bankrupt; the Commiſſioners ſell the Copyhold, the Vendee compounds with the Bargainer.

This is a good Sale, and a good Compoſition.

1. If Tenant by Copy may be diſſeiſed, or ouſted, and this ſhall be no diſſeiſin to the Lord?

2. If the Lord by the admittance of the Diſſeiſor hath diſpenſed with the diſſeiſin in part, and ſo he may apportion his own wrong?

7. *A.* diſſeiſes *B.* of the Mannor of *S.* and dies ſeized, *C.* the Son of *A.* enters, a Copyhold eſcheats; *D.* enters and diſſeiſes *C.* and Leaſes the Mannor for years to *E.* who grants the Copy to *F.* in Fee; *F.* dies, his Heir is ſworn of the Homage, and becomes a Bankrupt; *D.* dies, *B.* enters, the Commiſſioners ſell the Copyhold, the Vendee compounds with *B.* and is admitted; the Heir of *D.* recovers in a *Mortdaunceſter*, *C.* recovers in *Entry ſur diſſeiſin*, and *B.* recovers againſt him in a Writ of Right.

The Sale is good, and the Compoſition good.

8. *A.* and *B.* joynt-Tenants in Fee of a Mannor, they grant *white Acre* to *I. S.* for life by Copy; *A.* enters into Religion at *Roan*, *B.* makes a Leaſe for years of the Acre to *C.* to whom *I. S.* ſurrenders; *B.* dies, *A.* is deraigned, *C.* ſurrenders to *A.* *I. S.* becomes a Bankrupt; the Commiſſioners ſell the Copyhold, the Vendee compounds with *A.* the Heir of *B.* enters.

This

This is a good Sale, and a good Compoſition for a Moiety.

9. Six Copyholds eſcheat, the Lord grants them to *A.* a Merchant indebted, and after the Lord makes a Feoffment of the Freehold of the Copyhold to *B.* *C.* and *D.* the Merchant gives over Trading, *B.* diſſeiſes *C.* and *D.* the Merchant continues his debt by Intereſt, ſeven years paſs, *C.* and *D.* recover againſt *B.* and have judgment to hold in ſeveralty; *C.* and *D.* make partition; the Merchant renues his Bonds with the Creditors, and keeps his Houſe, the Commiſſioners ſell the Copyholds, the Vendee compounds with *B.* *C.* and *D.* ſeverally admitted.

The Sale is not good, becauſe the Merchant is no Bankrupt; but if it were good, the Compoſition was good, and B. C. and D. have three Cuſtomary Mannors.

The Sixth Diviſion.

What Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes, and Debts of a Bankrupt may be ſold by the Commiſſioners.

1. BEfore *Quia Emptores*, one makes a Feoffment in Fee, rendring Rent to be holden by Foreign ſervice, and a Tenant dies, and his Heir dies before entry, and a Stranger abates, the Lord becomes a Bankrupt, the Heir recovers in *Mortdaunceſter*, the Commiſſioners ſell all the Debts of the Lord.

The

The Vendee ſhall have two actions of Debt for two ſeveral Reliefs.

1. If the Heir ſhall pay Relief when his Anceſtor had but a Poſſeſſion in Law? he ſhall, *Kelloway* 173 *6 H.* 8.

2. If Debt lies againſt the Heir, for relief due, after the death of his Grandfather? 13 *E.* 3. *Relief* 6. A diſtreſs lies.

3. If Fee-farm made before *Quia Emptores* ſhall pay Relief? 45 *E.* 3. *fol.* 15. now it ſhall not.

4. If Tenant in Knights Service ſhall pay Relief? *Kelloway.*

5. If the Heir ſhall pay relief for Land which he had by recovery?

6. Debt lies for relief by the Lord himſelf, 23 *H.* 8. *Brook.* It lies for his Executors.

7. If relief is ſuch a debt or duty which the Commiſſioners may ſell?

2. *A.* Tenant of two Acres herriotable covenants to ſtand ſeized to the uſe of himſelf for life, the remainder to his Son in Fee, with clauſe of revocation, and for money paid, he bargains one Acre to *B.* *B.* dies, the Lord ſeizes a Herriot, the Heir of *B.* re-enfeoffs *A.* *A.* revokes the firſt Deed, the Lord is a Bankrupt, *A.* dies, the Commiſſioners ſell all the Lords Goods to *C.* *C.* takes relief of the Heir of *A.*

C. Shall have detinue for two Herriots againſt the Executors of A.

1. If two Herriots, or but one are due notwithſtanding the repurchaſe? 34 *E.* 3. *Herriot* 1. 2. They are due.

2. If the power of revocation be not gone notwithſtanding the repurchaſe? 3. If

3. If acceptance of relief of the heir may be pleaded by the Executors in an action againſt them for the Herriot? 26 *E.* 1. *H.* 6. *Quære.*

4. If detinue lies for a Herriot-Cuſtom? 6 *E.* 3. 29. *R.* 2. *Herriot* 4. and 5. the Lord may ſeize it in all the goods.

5. If the property of the Herriot is ſo veſted in the Lord before ſeizure, that the Commiſſioners may ſell it?

3. The King grants the Office of *Aulnage* of *London* to a Merchant ſtranger for years, with a Fee of 20. l. *per annum*, who aſſigns it to a Merchant Denizen indebted, who diſcontinues his Trade of Merchandize, and lives by his Office, and enters into Recognizances for his debts, and makes *I. S.* dis deputy, and is made Steward of the Tower of *London*, the Recognizances are forfeited, and he keeps himſelf in the Tower, Office is found.

The Commiſſioners ſhall neither ſell the Office, nor the Fee.

1: If the Leaſe be good, becauſe no Office of truſt, or confidence?

2. If diſcontinuance of Merchandize is an exemption from the Statute, when the Creditors have taken new aſſurances?

3. If the Steward of the Tower is not ſole Judge there by Preſcription?

4. A Feme ſole Alien, grants to *A.* a Scottiſh Merchant, the Office to be the maſter of her horſe, with a Fee of 20. l. *per annum* for his life; ſhe takes a Husband, who is made King of *England*, who by his Letters Patents grants the Maſterſhip of the Queens

Queens Horſe to *I. S.* with a Penſion out of the Exchequer, the Scot becomes a Bankrupt.

The Commiſſioners ſhall not ſell his Office, but they may ſell his Fee, and the Vendee ſhall have an Annuity for it againſt the Queen.

5. A Reſiant is injoyned in the Leet to reform a publique nuſans by him made before ſuch a day, upon pain of 10. *l.* at the next Court he is preſented, becauſe no reformation is made; and there then the Tenant Traverſes the Preſentment, that he is not guilty; the Traverſe is diſallowed, the Lord becomes a Bankrupt, the Affeerors reſuſe to affeere the amerciament, the Commiſſioners ſell all the debts of the Bankrupt to *A.*

A. *Shall have an action of debt for this amerciament.*

6. *A.* ſues execution of a Statute Merchant, and the Conizors Land is extended at too high a value, and refuſed by the Extendor, and delivered to the Jurors, *B.* defeats the execution by extending an elder Statute; *A.* is a Bankrupt, the Commiſſioners ſell all his debts, the elder Statute is ſatisfied, the Jurors will not enter.

This is a good Sale of the poſſibility to extend, and the Vendee ſhall have a Scire facias *againſt the Tenant by the elder Statute, and the terretenants, and the Jurors to revive the former Execution.*

7. *A.* and *B.* Tenants is Common, grant a rent of 10. l. *per annum* to *C.* who brings an *Annuity* againſt

againſt *A.* and recovers, and after he diſtrains and Avows upon *B.* and becomes a Bankrupt, the Commiſſioners ſell the Annuity, and the rent, a fourth part of the Land deſcends to the Vendee.

The ſale of the Annuity, and alſo of the rent were good, but he ſhall Avow upon B. *but for* 5. *l.* per annum.

1. If he can bring an Annuity againſt one, and diſtrain the other?

2. How a Rent ſhall be apportioned when part of the Land deſcends to the Grantee?

3. If a Rent charge be within this Statute, becauſe it is not within the words?

8. A Mannor in *Surry* is giving to Baron and Feme, and to the heirs of the Baron, the Baron dies, his heir, being a Merchant, claims the heir-looms; the Executors of the Father claim them as Chatells, the heir ſells the Reverſion, and becomes a Bankrupt, the Commiſſioners ſell the heir-looms.

This a good ſale, but the Wife ſhall have the uſe of them during her life.

9. One makes a Feoffment upon condition that the heir of the Feoffee ſhall infeoff *I. S.* the Feoffee grants a Rent-charge, the Feoffer enters for the Conditions, and dies; the Feoffee re enters, and two Co-partners being the heirs of the Feoffor, bring a *Mortdaunceſter* againſt the Feoffee, and recover the Land, and damages, they have other Land in execution by *Elegit* for the damages, the one dies, the other is a Bankrupt.

The Commiſſioners ſhall ſell all the Extent.

10. A

10. A Diſſeiſor makes a Leaſe for life to *A.* who makes a Leaſe for years to *B.* a Merchant ſtranger, who is made Denizen, upon Condition that he ſhall not depart the Realm, the Diſſeiſee confirms his eſtate, Tenant for life dies, the Diſſeiſor enters, *B.* being *non ſolvent*, by Licenſe of the King (with a *Non obſtante*) departs the Realm, the Commiſſioners ſell the term, the Vendee enters upon the Diſſeiſor.

The ſale of this term is good.

11. *A.* By Deed Poll demiſes the Land of *B.* to *C.* a Merchant, who enters, *B.* re-enters, *C.* in an action of Covenant, grounded upon the Deed, recovers 10. *l.* damages againſt *A. C.* being indebted is committed to Priſon by the High Commiſſioners for non payment of a Fine by them aſſeſſed, and there he remains by ſix moneths; the Commiſſioners aſſign the damages to *D.* who ſues a *Scire facias* in his own name againſt *A.* and hath Judgement to have Execution, *A.* brings a Writ of Error againſt *C.* of the firſt Judgement, *C.* confeſſes the Error.

The Judgement is erroneous, and yet the aſſignment of the damages is good, and D. ſhall have Execution.

12. *A.* Makes a Joynture to his Wife an Alien of part of his Land, and dies, ſhe is made a Denizen, and takes a Bankrupt to Husband, the Commiſſioners ſell the Joynture, part of it is evicted by elder title, ſhe ſues a *Scire facias*, and recovers other Land in re-

recompence, an Office is found, the Commiſſioners ſell as well the Land recovered in value, as the reſidue which was not evicted.

The ſale of the Land recovered in value is good, but not for the reſidue.

For New-Inn.

The Caſe.

THE Land of *A.* is extended for the debt of *B.* and *A.* grants the reverſion to *C.* in Tail, *B.* attornes, and hath a *Liberate*, *A.* grants the reverſion of *C.* to *D.* a Feme ſole Merchant Denizen of *Ireland*; *C.* commits Treaſon, and attorns, and ſuffers a common recovery to the uſe of himſelf; *D.* takes *E.* an Alien and Londoner to Husband, *C.* is attainted, *D.* continues ſole Merchant, *E.* is naturalized, *D.* is indebted, and elopes, *C.* dies without iſſue, *E.* enters, and is *non ſolvent*, a Commiſſion is awarded, and proclaimed, *D.* hath iſſue and dies, an Office is found, the Term expires.

Concluſion { *The Land ſhall be ſold by the Commiſſioners.*

1. When Land is extended, and before a Liberate, it is to be conſidered in whom the Land is, 3 *E.* 6. 68. It is ſaid, that goods extended are in the cuſtody of the Law, but yet not ſo out of the Conizors poſſeſſion, but that they may be extended for the

the Kings debt due by the Conizor, 41 *E.* 3. *Fitz. Recognizance* 38. Land was extended by the Sheriff, and before *Liberate*, the Lands were extended for the Kings debt, and ſo proceſs ſtayed, 33 *H.* 8. *Broke Recognizance* 41. *Liberate* may be taken out ſeven years after the extent, 41 *E.* 3. fol. 1. It is queſtioned whether the party, or the King ſhall have the mean profits of Lands taken by *cape grand*, till a petty *cape*.

Alſo it will be objected, that a reverſion will paſs by words of poſſeſſion, but poſſeſſion will not paſs by words of reverſion. *Frokmorton* and *Tracy*, 43 *E.* 3. and *Smith*, and *Stapleton*.

But except we prove this reverſion to be well granted, we are at an end of our caſe, for all the reſt depends upon this point.

We ſay then, that when Lands are extended, it is plain, they are out of the Conizor preſently: And although it ſeems, that for the time they are in the Kings hands, yet when the *Liberate* comes they are in the Conizee *ab initio*, and by ſtrong relation.

So as if a Mannor be extended to which an Advowſon is appendent, and the Church becomes void, and *Liberate* ſued, the Conizee (and neither the King, nor the Conizer) ſhall preſent. So if Arrearages of Rents fall due between the extent and the Liberate, the Conizee ſhall diſtrain, and avow for them.

Wherein I will compare it to *Longs* Caſe, that was in the Common Pleas, *Paſch.* 31 *Eliz. Rot.* 2024. one granted a Mannor to which an Advowſon was appendent, and made Livery, the Church became void, and afterwards the Tenants, attorned, the Grantee ſhall preſent, and the Attornment ſhall relate to make the Grantee in from the time of the Feoffment.

offment. And although it is said, 8 *H.* 5. fo. 10. that no man can attorn to a grant of a reverſion, that hath as yet nothing in poſſeſſion, but hopes or poſſibilities, As if Tenant for life grant his Eſtate upon condition, and the reverſion is granted, and he attorns, and then enters for the Condition, yet the attornment is void: But yet the Law will reſpect ſuch a poſſibility as 5 *E.* 3. fol. 36. Lands were given to the Baron and Feme, the Baron dies, the Feme makes a Leaſe for her own life, the Leſſee is impleaded in a *Cui in vita*, and he vouches the Feme, and ſhe prays in aid of the heir of the Husband, and well, and yet the Feme had nothing.

If I bargain, and ſell Lands to one for life, and then I grant the reverſion, and the Barganee attorns, and then the Deed is Inrolled, this Reverſion is well granted, and this is a good Attornment.

But it may be objected, that the Land is not in the Conizee upon the extent, for if it be extended at too high a rate, he may return it upon the extendors; for ſo are the Books of 44 *E.* 3. 2 *H.* 4. 17. 21 *E.* 3. 21. 15 *H.* 7. 16. and divers others Books.

But I make this an Argument for my ſelf; for that ſhews it is out of the Conizor, and if the Land were in the extendors hands, no doubt but the reverſion might be granted, and by the Book of 1 *E.* 3. 8. *in a quid juris clamat*, they ſhall be forced to attorne.

2 But admit that ſuch a grant of reverſion may be made, yet no grant of a reverſion can be good without Attornment of the particular Tenant, and here your Conizee the Tenant attorns before his time, that is, before he hath poſſeſſion by the *Liberate*, and ſo the caſe of 8 *H.* 5. *fol.* 10. comes full againſt

you. To that I anſwer, That the Tenant by Statute is eſteemed (in point of Attornment) as Tenant for term of years; for ſo the Caſe of 1 E. 3. fol. 8. eſteems him. And I make ſmall Queſtion, but that if a man make a Leaſe for years, and before the Leſſee enter the Leſſor grants the reverſion, and the Leſſee attorns, This is a good Attornment? for it matters not whether ever the Leſſee entered or not; for the Land was in him to give, grant, or forfeit, and 21 *H.* 7. *fol.* 27. after ſuch a Leaſe, if the Leſſee will not enter, (yet if the Leſſor waive the poſſeſſion) and a rent day accrews, the Leſſor may have an action of debt againſt the Leſſee without ever making any averment that the Leſſee entred. So in our Caſe, although the Conizee cannot enter of himſelf, but by the Livery of the Sheriff, yet he is not in by the Sheriff, but by the Law in the *Poſt*. And it is not very abſurd to ſay, he is in by and under, and from the Conizor: for if the Conizor had Covenanted, that any to whom he (after the Recognizance) had conveyed the Land ſhould have enjoyed it againſt all claiming from, by and under him, and the Conizee had ſued execution, the Covenant had been broken.

3. Then allowing that this firſt grant of the reverſion is good to *C.* in Tail; Then the next queſtion is that *C.* commits Treaſon, and *A.* grants the reverſion of *C.* in Fee to *D.* and *C.* Attornes, Whether this be a good Attorment? Whether if *C.* comes afterwards to be attainted for the Treaſon, and an Office being found hath relation to intitle the King to the Land from the time of the Treaſon committed, that is, Whether this Office ſhall not relate to make *C.* no Tenant of the Land from the Time of the Treaſon committed. I will agree, it will relate

to

to avoid all charges and incumbrances made by C. but yet the Attornment is good; for that I will put but one Case, that comes full home to the point, which is, Sir *Miles Fleetwood*'s Case, in my Lord *Cooks* 8. Report, which is that the Attainder, and Office relate to intitle the King to the Land from the time of the Treason committed, but not to Chattels sold, or to the mean profits of Lands received, so as for the mean time C. was Tenant, and might take the Profits, and the Rents paid to him by the Tenants were well paid, then *a fortiore* might he do, and execute all instrumental Acts, as if he had been Lord of a Mannor, and a Copyholder (after the Treason, and before Attainder) had surrendred to the use of another, who had been admitted, the surrender and admittance had been good, and so consequently the Attornment; for by the Attornment he parts with nothing of his own, only he is a means to profit another mans grant of that which was never his.

4. The next Question is, That the Tenant in Tail commits Treason, suffers a Recovery to the use of himself, and then it attainted, whether the King shall have the Fee-simple, or else whether the Office shall not relate to make the Recovery void? and whether he in Reversion, who by intention of Law had recovered other Land in value, shall have any benefit against the King, by the Kings priviledge, which he hath to avoid this Recovery?

It is plain, that if this Recovery had been to the use of a Stranger, the King by Office should avoid it, and consequently he in Remainder would have been remitted.

The difference of the relation of an Office to

Intitle the King to Goods, but from the Attainder, and to Lands from the time of the offence committed are theſe, 42 *E.* 3. 26. 33 *E.* 3. *Fitz.* Forfeiture. 30 31 *H.* 6. 5. *temp. H.* 8. *Bro.* fo. 42.

I take it, that if the King in this Caſe had taken the benefit of the Statute of 33 *H.* 8. *c.* 20. which gives the King all the Lands which a perſon attainted hath at the time of his Attainder, though there be no Office found, then the King might have ſeized the Land, and the party had had no remedy. But now an Office being found, the King is in by the Office, which diſcovers the whole matter of Record, and the party hath the benefit thereby, And thereby it appears that *C.* was by the offence, and the relation of the Attainder diſabled to make any Conveyance or diſpoſition of his Land; That a Common Recovery is a Conveyance; *vide Coke li. primo, Pelhams* Caſe. So this Grant of the reverſion to *D.* is good, and not pulled out by the Recovery.

But it is granted to one that is an Alien born, but made a Denizen of *Ireland*, whether now the King be not intitled to the reverſion in Fee, as the Lands of an Alien?

I take it, that he that is free of *Ireland*, is free of *England*, it is true, that one which was born in *Scotland ante*, &c. and theſe that were born in times paſt in *Aquitain*, or in *Normandy* were Aliens born, becauſe theſe Countries were brought with the Kings of *England* as their former inheritance; but *Ireland* was conquered by *H.* 2. and inhabited, and planted with Engliſhmen, and upon the matter made part of the demeaſnes of the Crown of *England*, as other Iſlands are, as the *Wight*, and *Jerneſey*, *Virginia* and *Greenland*, and therefore the Kings of *England* did not call themſelves Kings of *Ireland* but

but Lords of *Ireland*, and the Parliaments of *England* bound them till 2 *H.* 7. and they are governed by the Laws of *England*; And if a Denizen of *Ireland* bring an Action in *Ireland*, and it be adjudged againſt him there, he may have a Writ of Error in the Kings Bench here, and reverſe it, and it is no Plea of the Defendant here to plead in abatement of the Writ of Error, that the Plaintiff is an Alien, which ſhews, that if he be free of *Ireland*, he is free of *England*, as all born in *Ireland* are. Authorities that *Ireland* is ſubject to the Laws of *England*, and that their errors are to be corrected here, *viz.* 15 *E.* 3. Fitz. Record 17. *and error.* 72. 34. *Aſ.* 7. 5 *E.* 2. Fitz. *Error.* 89. *Natura Brevium*, fol. 22. *E.*

See *Caſe de poſt nati.* 2 *R.* 3. 12. *Kelway* 11 *H.* 8. fol. 202. read this caſe.

6. She is married to a Londoner being an Alien, It may be queſtioned whether an Alien be capable of the freedom of *London*, or not? and I ſay, he is; but there be private orders, that none ſhall be admitted or made free; but if *de facto*, he be made free, then free he is till he be disfranchiſed.

7. That the Wife of a Freeman of *London* may by the cuſtom be a ſole Merchant, 1 *E.* 4. *fol.* 6. 35 *H.* 6. 28. 9 *E.* 4. 35. 21 *H.* 7. 17.

Points upon the Statute.

WHether ſuch a Feme covert, ſole Merchant can be a Bankrupt? I think ſhe may, for by the cuſtom, ſhe may buy, and ſell, and ſue, and be ſued, then ſhe is within the words of the Statute, which is getting her living by

buying and ſelling; for otherwiſe the Statute would be deluded, and the *Londoners* Wives only ſhall buy and ſell, and trade.

2. Whether a Denizen of *Ireland* be within this Statute? Beſides the former Arguments, ſee the words of the Statute, which are, &c. But you muſt intend that ſhe was made Denizen of *Ireland* by Letters Patents under the Great Seal of *England*, and not of that of *Ireland*: Note, an old difference.

3. Whether the Wife can be a Bankrupt within this Statute, when the Husband, becauſe he is an Alien, cannot be within the ſame? As if an Alien marry an Engliſhwoman, and they with others rebel, the Woman is a Rebel, and a Traitor, and if ſhe be taken in the Wars, ſhe ſhall be executed in cold blood, but the Husband is but as an Enemy, and by the Law of Arms may be ranſomed.

4. But he is afterwards naturalized, whether he be within the Equity of the Statute, becauſe he is not within the words? But *tantamount*: amplifie this with caſes of *tantamount*, and of *qui poteſt majus, & minus poteſt ſi unico vincentem te à majori unico te.*

5. If a Feme Covert ſole Merchant elopeing ſhall be a Bankrupt? the difference will be when ſhee lopes carrying her Goods with her, ſo as ſhe leaves her Husband *non ſolvent*, and when ſhe leaves him ſufficient; for if ſuch a Woman be indebted, no doubt but the Creditor may ſue her by the Cuſtom in the Courts of the City, or elſe he may ſue the Husband alone at the Common Law: But if he be *non ſolvent*, her abſenting of her ſelf will make them both Bankrupt; her, as a Merchant by Cuſtom, and him for his folly to ſuffer her.

6. Whether her Land ſhall be ſold? it ſhall; for it may be, it was the credit of her land, that procured her to be truſted.

7. An

7. And it ſhall be ſold after her death by the Statute of *primo Jacobi* of Bankrupts.

8. Whether his Eſtate which he hath as Tenant by the courteſie ſhall be ſold? for the Eſtate of Dower of a Bankrupts Wife ſhall never be ſold: But I anſwer, here the Land ſhall be ſold, and he ſhall not be Tenant by the courteſie. Firſt, note in many caſes where there ſhall be Dower, but yet no tenancy by the courteſie, as *Payne*'s Caſe. Lands are given to a Feme, and to the Heirs Males of her body, and ſhe hath iſſue a Daughter, and dies, the Husband ſhall not be Tenant by the courteſie, the ſame it is if the iſſue be ripped out of his Mothers belly after her death: But here the Husband is *particeps Criminis*, and a Bankrupt, and his intereſt ſhall be ſold for his debt; for ſo were all the debts of his Wives making, and his Wife traded in his right, and for him, if he ſo pleaſe, and the Reverſion ſhall be ſold for the payment of the ſame debts; for they were hers.

The firſt Diviſion.

Who ſhall be ſaid a Merchant, or other perſon ſeeking his, or her, living by buying and ſelling.

1. AN Inn keeper is indebted, and abſents himſelf; he is a Bankrupt.

2. A Feme Covert ſole Merchant in *London*, the Baron is outlawed, the Feme is a Bankrupt.

3. A Feme Covert ſole Merchant in *London* elopes, the Husband is *non ſolvent*, the Feme is Bankrupt, and her Land ſhall be ſold.

4. An Officer of the Court takes a Leaſe of the

King, of the ſole Preemption of Tyn, he is a Bankrupt for all debts he makes during his Term.

5. Such a Leſſee pays not his Debts in ſeven years after his Leaſe expires, and after he leaves off buying and ſelling of Tyn, yet he is a Bankrupt: But if his Creditors give him longer time (after he hath given over) and cancel their old Aſſurances, and take new: he is no Bankrupt.

6. A Graſier that hireth Grounds, and buys Cattle and feeds them, and ſells them again is a Bankrupt: but if he graſe his own Free-hold, contrary.

7. A Clothier that ſets poor People a Work, but himſelf doth nothing but buy Wooll, and ſell Cloth, is a Bankrupt: But if he work himſelf, and keep Looms and Servants, contrary.

8. An Ironmonger in *London* is a Bankrupt, but a Lock-Smith, contrary.

9. A Goldſmith Hammer-man is not a Bankrupt, but a Goldſmith Shoop-keeper is a Bankrupt.

10. A Gentleman Adventurer in *Virginia* is not, but to the *Eaſt-Indies* is a Bankrupt.

11. An Adventurer into *Greenland* is not a Bankrupt, into *Muſcovia* is a Bankrupt: No Adventurers for Diſcovery, and Plantation, are within the Statute, although they carry with them trifles to exchange, and truck with the Savages; for their end is not Merchandizing.

12. A Nobleman hath granted to him the ſole importing of Cards, or Glaſſes, is a Bankrupt: but a Monopoliſt that hath granted to him the ſole making, contrary.

13. A Tailor that uſeth to make apparel to Noblemen or Ladies, and to buy the ſtuffs for them, and ſets higher prizes in Bills then the ſtuffs coſt, is a Tromper and a Deceiver, but not a Bankrupt.

14. But

14. But a Tailor in *London* whom we call a Saleſman that keeps Shop of Apparel to ſell ready made is a Bankrupt, he is like a Clothier.

15. No Handicrafts-man that is in the compaſs of the Statute of 5 *Eliz.* is a Bankrupt, although he buy his Materials wherewith he makes his Ware, and ſells his Ware again, as a Shoomaker.

16. A Vinter is a Bankrupt, for he buys Wine, and ſells Wine: but I doubt of a Brewer.

The ſecond Diviſion.

Who ſhall be ſaid to be a Subject born within the Realm, or Denizen.

1. NO Ambaſſadors Children born in *England* can be; for although they were born within the Realm, yet they are not Subjects born.

2. One born upon the Coaſts of *Denmark*, or the Low Countries is no Bankrupt; but one born upon any part of the French Coaſts, or *Brittany*, between *Calice* and the Iſle of *Oleron* is a Bankrupt.

3. One born in *Ireland*, or the *Iſle of Man*, or in *Garneſey*, &c. or in *Barwick* is a Bankrupt, but neither the *ante nati* nor *poſt nati* of *Scotland* are within this Statute, but they are both within the Statute, of *primo* the King.

4. A Merchant Stranger is made Denizen upon condition that within ſeven years he ſhall marry an Engliſh Woman, he becomes indebted, and at five years end he marries an Alien, and departs the Realm, and before ſeven years end ſhe dies, and he marries an Engliſh Woman, he ſhall be Denizen, and Bankrupt within this Statute.

5. A

5. A Merchant Stranger is made Denizen upon condition, that he ſhall not depart the Realm, and he departs, yet he is a Bankrupt; but if it were for anothers life, contrary; for that is not his own act.

6. One is made Denizen of *Ireland* by Charter under the Great Seal of *Ireland*, he is no Bankrupt; but if it were under the Great Seal of *England*, contrary.

7. One naturalized by Act of Parliament is Bankrupt.

8. A Merchant Stranger is ſworn to Allegiance in the Leet, or at Seſſions, and dwells here for twelve years, by the Law of Nations this makes him ſubject to the King, but not within the Statute; for he muſt be a Subject-born, wherein he is different from an Ambaſſadors Son; for he is born, but no Subject, and this contrary.

9. Baron and Feme travel beyond the Seas by Licenſe, a Son born there is not a Bankrupt, yet he is a Subject, but not a Subject born within the Realm.

10. One born in *England*, becomes a ſworn Subject to the King of *Spain*, and dwells and trades there for two years: he is within the Statute, and his Goods there ſhall be ſold. Doctor *Story*.

11. A Merchant Stranger is naturalized without being ſworn to the Supremacy, or Allegiance, he is a Bankrupt notwithſtanding the Statute of 7 *Jacobi*, cap. 2.

The

The Third Diviſion.

In what Caſes, and what matters make one Bankrupt, as departing the Realm, &c. *as in the ſecond Diviſion.*

1. A Feme Covert ſole Merchant of *London* Elopes with her Goods into *Scotland*, ſhe is a Bankrupt.

2. The Baron of ſuch a Feme is outlawed for the Debt of the Feme, the Baron and Feme are both Bankrupts.

3. A Merchant departs the Realm to Merchandize, and becomes indebted, and to avoid arreſts, defers his return, this doth *tantamount*, as a departing of the Realm.

4. One departs the Realm by Licenſe, and becomes a Merchant, and a Privy-Seal awarded againſt him; he refuſeth to return, he is a Bankrupt.

5. *A Capias de excommunicato capiendo* is awarded againſt one, who for fear of Arreſts, departs the Realm, he is no Bankrupt.

6. The ſame for departing the Realm, or keeping his Houſe for fear of an Attachment in Chancery.

7. A Merchant indebted, keeps a Shipboard, this is keeping his Houſe.

8. A Maltman becomes a Miller, and he keeps in the Mill.

9. The King grants to a Merchant indebted the keeping of a Caſtle, who keeps the ſame by colour of his Office, but for fear of Arreſts refuſeth to come abroad to Church, *&c.*

10. A Merchant indebted, departs the Realm to Merchandize, and having loſs by Tempeſt, returns

turns no more, this is not a departing, *&c.* but an abſenting himſelf.

11. One recovers debt in the Admirals Court, upon a Contract made upon the high Sea, and the Defendant being a Merchant lies in execution in the Admirals Priſon for ſix months, he is a Bankrupt.

12. An Apothecary is made Church-warden, and being indebted keeps in the Church; this is a keeping of his Houſe.

13. One hath no Houſe of his own, but keeps in another mans Houſe, and is a Bankrupt, it is his Houſe.

14. There be now in *England* no Sanctuaries, therefore all priviledged places where the Kings Officers cannot come, (and yet there is no Law, nor Juſtice to be had judicially in the place,) is within theſe words of taking of Sanctuary.

15. To keep in the Tower of *London* is no taking of Sanctuary, but if the Steward, or the Lieutenant be a Merchant, and indebted, and keep the Tower, he is a Bankrupt.

16. One takes *Gray*'s-Inn, is a Bankrupt, yet they have no exemption from Officers, but *uſus, & condo*, &c.

17. One hath no Houſe, but an upper Chamber, 7 *E.* 3.

18. One is outlawed, he is a Bankrupt, but if the Outlary be reverſed for want of Proclamations, all done in the mean time by the Commiſſioners is void; but if it were reverſed for Error, contrary.

19. One outlawed in the County Palatine of *Durham* is a Bankrupt, but contrary in *Ireland*, for the Record is not pleadable here.

20. A Merchant hath a Rectory appropriate, the

the Quire is not repaired, the Tithes are ſequeſtred, no ſequeſtration within the Statute.

21. A Merchant ackowledges himſelf to be the villain of *I. S.* to defraud his Creditors, he is a Bankrupt, and yet his goods and body are not ſubject to Commiſſion.

The fourth Diviſion.

What Freehold Lands of a Bankrupt may be ſold by Commiſſioners.

1. A Merchant makes a Feoffment in Fee upon Condition, upon payment of money to re-enter, he becomes a Bankrupt, the Commiſſioners may tender the money at the day, and ſell the Land.

2. A Bankrupt is Tenant in Tail, the Commiſſioners may ſell the Land, and the ſale ſhall be as good, as if it were by Fine, for Tenant in Tail by Fine, *&c.* may lawfully depart with the Land.

3. One hath a Leaſe for years, upon condition to have in Fee, the Commiſſioners may ſell the Term, and poſſeſſion.

4. Land is deviſed to a Bankrupt the Commiſſioners may ſell, and the Bankrupt ſhall not wave the deviſe.

5. A Bankrupt hath a villain, and *manumits* him, the Commiſſioners ſhall not ſell *in favorem Libertatis.*

6. A Baron uſeth merchandize, and is *non ſolvent*, the Commiſſioners ſhall not ſell his Barony.

7. A Rent ſeck whereof is no ſeiſin ſhall be ſold, and good without Attornment.

8. All

8. All Offices of inheritance ſhall be ſold, as the Wardenſhip of the Fleet, or a Jaylor by inheritance; contrary of all Offices of truſt, that are but for life.

9. A Monopoly granted to one, and his Aſſignes, as the ſole making of Cards, *&c.* ſhall not be ſold, becauſe it is a void Patent, and nothing paſſes by it.

10. The Office of ſole Printing of Law Books is void, therefore not ſaleable.

11. A Bankrupt becomes Lunatique, and Office is found, yet the Land ſhall be ſold.

12. A Bankrupt is Tenant in Tail, the remainder in the King of the Proviſion of the King, ſale by the Commiſſioners ſhall not be good againſt the iſſue in Tail; for the Bankrupt neither by Fine, nor Recovery could lawfully part with it but for his life.

13. A Bankrupt hath a Seigniory, the Commiſſioners ſeize, before aſſignment a Tenancy eſcheats, the Tenancy ſhall be ſold, but if after ſeiſure of the Seigniory, and before the Eſcheat the Bankrupt dies, the Commiſſioners ſhall not ſell by this Statute, but by the Statute of *primo Jac.* the Tenancy ſhall be ſold.

14. Two Joyntenants, one is a Bankrupt, the Commiſſioners ſeize a Moiety, the Bankrupt dies, no part ſhall be ſold by this Statute, but by *primo Jacobi* a moiety ſhall be ſold; for that Statute is, that the Commiſſioners ſhall proceed, as if he were living.

15. A Merchant takes a Wife after he is a Bankrupt, ſhe ſhall not have Dower againſt the Vendee.

16. A Feme Covert ſole Merchant inheritrix in *London* is a Bankrupt, her land ſhall be ſold, and her Husband ſhall not be Tenant by the courteſie.

17. A Bankrupt commits Felony, the Land ſhall not eſcheat, but the Commiſſioners may ſell it.

The

The fifth Diviſion.

What Copy-hold Lands ſhall be ſold, and in what caſe Compoſition ſhall be made with the Lord, and in what not.

1. THe Lord ſells the Freehold of one ſole Copy-holder to *A.* the Copy-holder is a Bankrupt, the Commiſſioners ſhall ſell.

2. The Lord is to be compounded with for the Admiſſion by the Statute, and in this Caſe here can be neither Surrender nor Admiſſion, yet by the equity of the Statute the Lord muſt be compounded with.

3. Commiſſioners ſell a Copy-hold, the Vendee tenders to the Lord a competent Fine, which the Lord refuſes, and will not admit the Vendee, the Vendee may enter.

4. If a Copy-hold be intailed to a Bankrupt in a Mannor where Recoveries are uſed to cut off intails, Commiſſioners may ſell, but if no Cuſtom be for Recoveries, contray.

5. A Copy hold is ſurrendered to the uſe of a Bankrupt, who will not take it up, or ſue to be admitted, becauſe it ſhall not be liable to his Creditors; the Commiſſioners ſhall ſell it.

6. A Copy-hold is ſurrendred to the uſe of a Bankrupt, who will not be admitted; the Commiſſioners ſhall ſell, but the Vendee ſhall pay two Fines.

7. A Copy-holder (where the Feme by Cuſtom ſhall have Dower) ſurrenders into the hands of two Tenants,

Tenants, and dies, the Feme marries a Bankrupt, the ſurrendree is admitted, the third part of the Feme ſhall be ſold, but no remedy for the damage betwixt the death of the Husband, and the admittance.

8. One ſurrenders Copy-hold to the uſe of a Bankrupt, the Lord diſſolves his Court, yet the Commiſſioners ſhall ſell.

The ſixth Diviſion.

What Annuities, Fees, Goods, Chattels, Debts, &c. Commiſſioners may ſell.

1. B. Hath a Leaſe for years made unto him upon condition that he ſhall not alien, yet the Commiſſioners may ſell, and this is no forfeiture.

2. *B.* hath the next advowſon, the Church is void, the Commiſſioners ſell the Preſentation, the Vendee ſhall preſent, and no Symony.

3. A Bankrupt purchaſes Land with warranty, the Vendee of the Commiſſioners ſhall not vouch, but he ſhall rebut.

4. Commiſſioners ſell a rent, or reverſion, this is good without Attornment.

5. A Bankrupt becomes Lunatique, his goods ſhall be ſold; as before of Lands, *&c.*

6. Lord and Tenant, the Lord is a Bankrupt, the Tenant dies, the Commiſſioners ſhall ſell, the money, or debt due for relief.

7. The ſame of a Herriot.

8. The Lord is a Bankrupt, the Tenant dies, the Commiſſioners ſell the Relief-money, and the Herriot,

riot, the Executors pay the Relief, the heir ſhall not pay a Herriot.

9. The King Leaſes the Aulnage of *London* for years, the Leſſee is a Bankrupt, the Leaſe ſhall be ſold.

10. Lord of a Leet is a Bankrupt, the Commiſſioners ſhall ſell the Amercements paſt, and the Vendee ſhall have an action of debt.

11. A Leaſe for years is deviſed to *A.* if he live ſo long, the remainder to one *B.* the Commiſſioners ſhall not ſell the poſſibility.

12. Land is extended, and delivered to the Extenders, becauſe too high, another defeats this Execution, by extending of a former Statute, the firſt is a Bankrupt, the Commiſſioners ſhall ſell the poſſibility.

13. A Rent charge ſhall be ſold, yet it is not within the words.

14. The ſame Law of a Common in groſs.

15. It is the Cuſtom in *Surrey*, that certain Heir-Looms ſhall go with the Land, and not to the Executors, the Land is intailed, Tenent in Tail is a Bankrupt, the Heir-Looms may be ſold from the Land, and the iſſue hath no remedy.

16. Two Tenants in Common recover damages in treſpaſs, the one dies, the other is a Bankrupt, all the damages ſhall be ſold.

17. A Bankrupt recovers damages by an erroneous judgement, the Commiſſioners aſſign them to the Creditors, who recover them in execution, the Judgement is reverſed, the ſale was good, but the Aſſignees or Vendees ſhall make reſtitution.

18. A villain is a Merchant, the Lord ſeizes all his goods, and impriſons his perſon for ſix months, he is a Bankrupt, the Lord ſhall have his goods, but his debts ſhall be ſold.

19. A Villain Merchant is a Bankrupt, the Lord ſeizes his goods, yet the Commiſſioners may ſell.

20. A Merchant by Outlary becomes a Bankrupt, the Creditors ſhall have his goods, and not the King.

21. A Merchant Bankrupt commits Felony, his Creditors, and not the King ſhall have his goods.

22 A Bankrupt is *felo de ſe*, the Almoner ſhall have his goods, notwithſtanding this Statute, but by *primo Jacobi* the Commiſſioners ſhall have them.

The ſeventh Diviſion.

Who ſhall be ſaid a Creditor that ſhall be relieved, and and who not, and what ſhall be ſaid to be a juſt debt intended?

1. ONe ſole Creditor ſhall not by this Statute ſue the Commiſſion; for it ought to be at the Sute of his Creditors.

2. Merchant Mortgages his Lands, the Mortgagee may chooſe to come in as a Creditor.

3. A Merchant enters into a Statute, or Recognizance, the Conizee is a Creditor, elſe he ſhall have neither Land, nor money, if he come not, and contributes.

4. A Merchant pledges goods and becomes Bankrupt, the party need not come in.

5. The plaintiff that hath the defendants body in execution, ſhall not come in to be relieved.

6. But he that hath a judgement for a debt may come in before execution.

7. One

7. One that hath the Bankrupts body in execution upon a Statute Merchant may come in.

8. One that recovers damages in Waſte, or Aſſiſe, or treſpaſs, ſhall not be relieved.

9. An Informer recovers money forfeited by a ſpecial Statute, he ſhall not be relieved.

10. A Bankrupt is indebted to the King, Commiſſioners ſeize the Bankrupts goods, proceſs comes to the Sheriff, he ſhall leavy the Kings debt before ſale; but if they had ſold before the proceſs awarded, the Sale would have been good.

11. A Merchant is impriſoned, and becomes debtor to *A.* ſix months paſt, *A.* ſhall have relief; for he is not a Bankrupt by relation.

12. A Bankrupt is committed to priſon by Commiſſioners, becauſe he will not anſwer interrogatories, the Jaylor gives him credit for victuals, he ſhall not be relieved, although he come in before diſtribution, or any man that truſts him after.

13. A Bankrupt is indicted and convicted of erecting of Cottages, and entertaining of Inmates, contrary to the Statue of *Eliz.* 31. *Cap.* 7. which gives 10, *s.* a moneth forfeiture to the Lord of the Leet where the offence was committed, and an Action of debt for the money: he ſhall not be relieved for this debt: becauſe no Creditor.

14. A Merchant is bound as Surety for a Gentleman, and neither of them will pay, but for fear of Arreſt the Merchant keeps his houſe; the Creditors ſhall be relieved. *Denhams* Caſe.

15. An Executor becomes Bankrupt, a Legatee ſhall be relieved.

16. A Decree is made in Chancery, that a Merchant ſhall pay 20. *l.* to *I. S.* as a debt due in equity *I. S.* ſhall be relieved.

 17. But

17. But it is decreed in *Star Chamber*, that a Merchant for a wrong done to *I. S.* ſhall pay him 20. *l.* and the Merchant becomes a Bankrupt, *I. S.* ſhall not be relieved.

18. One hath a debt not yet due, he ſhall be preſently relieved with a rateable part of abatement for the time.

19. Four Moneths are paſt, and diſtribution made, and other goods and Lands come or deſcend to the Bankrupt, the Greditors ſhall have no relief of them.

The eighth Diviſion.

What Conveyances made by a Bankrupt, before or after he is Bankrupt, ſhall be good, or fraudulent and void.

1. A Merchant to defraud his Creditors, conveys his Lands to the Crown, with a ſecret hope, that ſome friend of his (a Courtier) ſhall get them again, this Conveyance is void; for the King ſhall never be made an inſtrument of deceit, 18 *E.* 3.

2. A Bankrupt takes a Feme after he is a Bankrupt, ſhe ſhall not be indowed, but if Lands afterwards deſcend to him, of that ſhe ſhall be indowed.

3. A Bankrupt is diſſeiſor, Commiſſioners ſell the Land, and before the deed be Inrolled, the diſſeiſee releaſes to the Bankrupt, the Vendee ſhall have the benefit of his releaſe: *Quæſtio difficilis.*

4. A Bankrupt to defraud his Creditors by Coven with

with a Lord of a Liberty, becomes a Clerk convict, yet the Commiſſioners ſhall ſell.

5. Lord and Tenant, the Tenant makes a Feoffmen to deceive the Lord of the Wardſhip of his heir within age, the Tenant becomes a Bankrupt, the Land ſhall be ſold; for although the Conveyance were fraudulent againſt none but the Lord, yet there was a Truſt between the Feoffor and the Feoffee.

6. A Conveyance made by a Merchant in Marriage with his daughter is good. But if he make ſuch a Marriage, and Conveyance of purpoſe to defraud his Creditors, with an intent, that his daughter ſhall rather have his goods, than his Creditors, the Land ſhall be ſold.

The ninth Diviſion

What ſhall be ſaid to be a Concealment of a Bankrupts Goods, Lands, Eſtate, or perſon.

1. THe Bankrupts Wife refuſes to be examined, no remedy.

2. The Bankrupts Wife is examined, but refuſeth to diſcover, either her Husbands eſtate, or his perſon, ſhe ſhall not be committed.

3. A Merchant *bona fide*, ſells Land to *I. S.* and afterwards becomes Bankrupt, *I. S.* may chooſe to ſhew his Evidence.

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The tenth Diviſion.

What Declaration, or Accompt the Commiſſioners ſhall make to the Creditors of a Bankrupt, and what remedy is there for the ſame.

1. IF the Bankrupt die, yet his Executors ſhall have an action againſt the Commiſſioners, but if all the Commiſſioners die, their Executors, nor the Executors of the Survivor are not accomptable.

2. If after ſeizure, and before diſtribution all the Commiſſioners but one die, he cannot proceed alone, but a new Commiſſion ſhall be awarded, and the new Commiſſioners ſhall call the old to accompt.

3. If the Commiſſioners will not pay a Creditor his rateable part, he hath his Action of debt.

The eleventh Diviſion:

What authority the Commiſſioners have over the body of the Bankrupt.

The twelfth Diviſion.

What danger it is to be out of the Kings protection by the force of this Statute.

FINIS.